

**UNITED STATES INTERNATIONAL TRADE COMMISSION**

**CERTAIN COLD-ROLLED STEEL PRODUCTS FROM  
AUSTRALIA, INDIA, JAPAN, SWEDEN, AND THAILAND**

**Investigations Nos. 731-TA-965, 971-972, 979, and 981 (Final)**

**DETERMINATIONS AND VIEWS OF THE COMMISSION**

**(USITC Publication No. 3536, September 2002)**

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**DETERMINATIONS**

On the basis of the record<sup>1</sup> developed in the subject investigations, the United States International Trade Commission determines,<sup>2</sup> pursuant to section 735(b) of the Tariff Act of 1930 (the Act),<sup>3</sup> that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Australia, India, Japan, Sweden, and Thailand of certain cold-rolled steel products, provided for in headings 7209, 7210, 7211, 7212, 7225, and 7226 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

**BACKGROUND**

The Commission instituted these investigations effective September 28, 2001, following receipt of petitions filed with the Commission and Commerce by Bethlehem Steel Corporation, Bethlehem, PA; LTV Steel Co., Inc., Cleveland, OH; National Steel Corporation, Mishawaka, IN;<sup>4</sup> Nucor Corporation, Charlotte, NC; Steel Dynamics Inc., Butler, IN; United States Steel LLC, Pittsburgh, PA; WCI Steel, Inc., Warren, OH; and Weirton Steel Corporation, Weirton, WV.

The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of certain cold-rolled steel products from Australia, India, Japan, Sweden, and Thailand were being sold at LTFV within the meaning of section 733(b) of the Act.<sup>5</sup> Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of June 3, 2002 (67 FR 38291). The hearing was held in Washington, DC, on July 18, 2002, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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<sup>1</sup> The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

<sup>2</sup> Commissioner Lynn M. Bragg dissenting.

<sup>3</sup> 19 U.S.C. § 1673d(b).

<sup>4</sup> National Steel Corporation is not a petitioner with respect to Japan.

<sup>5</sup> 19 U.S.C. § 1673b(b).



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**VIEWS OF THE COMMISSION**

Based on the record in these investigations, we find that an industry in the United States is not materially injured or threatened with material injury by reason of imports of certain cold-rolled steel products from Australia, India, Japan, Sweden, and Thailand that are sold in the United States at less than fair value (“LTFV”).<sup>1 2</sup>

**I. DOMESTIC LIKE PRODUCT AND INDUSTRY**

**A. In General**

In determining whether an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”<sup>3</sup> Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant domestic industry as the “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”<sup>4</sup> In turn, the Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation . . . .”<sup>5</sup>

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<sup>1</sup> Commission rule 209.68(b) provides that final party comments “containing new factual information shall be disregarded.” 19 C.F.R. § 209.68(b); see also 19 U.S.C. § 1677m(g). The following final comments filed on August 23, 2002, and August 26, 2002, contain new factual information to be disregarded:

**Final Comments of August 23, 2002, to be disregarded:**

Bethlehem, et al.: Paragraph beginning at the bottom of page 1 and continuing to the top of page 2.

Nucor, et al.: Page 14, section D in its entirety and fn. 73.

AGS: Page 6, last sentence of fn. 10.

Sandvik and Uddeholm (Sweden): Bottom of page 2, and all information concerning the Andren statement.

Spain: Exhibits 2 and 3.

**Exclusion Comments of August 26, 2002, to be disregarded:**

Bethlehem, et al.: Table 1, column related to anticipated consumption in 2003.

Nucor, et al.: Footnotes 4-8 and information obtained from article cited in footnotes 4-8; Part III in its entirety on pages 3-4; part IV in its entirety and notes 9-12.

AK Steel: Entire brief except first paragraph on page 1.

AGS (Germany): Page 2, last sentence of middle paragraph.

Sidmar (Belgium): Footnotes 6 and 7, sections 1 and 2 on pages 3-5 and attachment.

<sup>2</sup> Commissioner Bragg dissenting. See her Dissenting Views.

<sup>3</sup> 19 U.S.C. § 1677(4)(A).

<sup>4</sup> 19 U.S.C. § 1677(4)(A).

<sup>5</sup> 19 U.S.C. § 1677(10).

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.<sup>6</sup> No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.<sup>7</sup> The Commission looks for clear dividing lines among possible like products and disregards minor variations.<sup>8</sup> Although the Commission must accept the determination of the Department of Commerce (“Commerce”) as to the scope of the imported merchandise that has been found to be subsidized or sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.<sup>9</sup>

## B. Product Description

Commerce’s final determinations defined the imported merchandise within the scope of these investigations as follows:

cold-rolled (cold-reduced) flat-rolled carbon-quality steel products, neither clad, plated, nor coated with metal, but whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances, both in coils, 0.5 inch wide or wider, (whether or not in successively superimposed layers and/or otherwise coiled, such as spirally oscillated coils), and also in straight lengths, which, if less than 4.75 mm in thickness having a width that is 0.5 inch or greater and that measures at least 10 times the thickness; or, if of a thickness of 4.75 mm or more, having a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular or other shape and include products of either rectangular or non-rectangular cross-section.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of

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<sup>6</sup> See, e.g., NEC Corp. v. Department of Commerce, 36 F. Supp.2d 380, 383 (Ct. Int’l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. See Nippon Steel, 19 CIT at 455 n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

<sup>7</sup> See, e.g., S. Rep. No. 96-249 at 90-91 (1979).

<sup>8</sup> Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-749; see also S. Rep. No. 96-249 at 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”).

<sup>9</sup> Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this investigation, regardless of definitions in the HTSUS, are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight, and; (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium (also called columbium), or 0.15 percent of vanadium, or 0.15 percent of zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded.<sup>10</sup>

As defined above, the scope of these investigations covers a range of cold-rolled steel products.<sup>11</sup>

In cases such as the present one, where the domestically manufactured merchandise corresponding to the scope comprises a continuum of similar products, the Commission generally does not consider each item of merchandise to be a separate domestic like product that is only “like” its counterpart in the scope, but considers the continuum itself to constitute the domestic like product.<sup>12</sup>

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<sup>10</sup> See Appendix I—Scope of the AD/CVD Investigations on Certain Cold-Rolled Steel Products of Commerce’s final LTFV determination concerning Australia (67 Fed. Reg. 47509, 47510 (July 19, 2002)), included in Appendix A of the final Staff Report in these investigations. Commerce’s Appendix I includes a fuller statement of the scope of these investigations. Commerce subsequently published clerical corrections to the exclusion descriptions of porcelain enameling sheet and texture-rolled steel strip. 67 Fed. Reg. 52934 (Aug. 14, 2002). See also, Commerce’s Issues and Decision Memorandum for the Final Scope Rulings in the Antidumping Duty Investigations on Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela, and in the Countervailing Duty Investigations of Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Brazil, France, and Korea (July 9, 2002). 67 Fed. Reg. 47509 (July 19, 2002). The subject merchandise is also described in the Staff Report in these investigations, INV-Z-127 (Aug. 14, 2002) (hereinafter “PR,” public version of the report, and “CR,” confidential version, *i.e.*, containing business proprietary information) at I-17 and I-23 (Commerce’s scope, U.S. tariff treatment, physical characteristics, manufacturing processes, and uses), and references cited therein.

<sup>11</sup> Forty-seven products are excluded from the scope of these investigations. See preceding note. In the preliminary phase of the investigations, Commerce identified 36 excluded products. See, 67 Fed. Reg. 31181 (May 9, 2002) and 67 Fed. Reg. 47509 (July 19, 2002).

<sup>12</sup> Certain Steel Wire Rod from Canada, Germany, Trinidad and Tobago, and Venezuela, Inv. Nos. 701-TA-368-371 (Final), USITC Pub. 3075 (Nov. 1997) at 7.

### C. Domestic Like Product Issues

In the preliminary phase of these investigations, the Commission found a single domestic like product, certain cold-rolled steel, corresponding to the description of the scope of the subject merchandise.<sup>13</sup> The Commission considered like product issues with respect to two specific types of cold-rolled steel, texture-rolled carbon steel and certain wood bandsaw steel, and found that both properly were included in the one domestic like product of certain cold-rolled steel.<sup>14</sup>

Petitioners and the Association of Cold-Rolled Strip Steel Producers (“ACRSSP”) support the finding of one like product consisting of all certain cold-rolled steel. Respondents Sandvik Steel Company (“Sandvik”), Bohler-Uddeholm AG and Bohler-Uddeholm Strip Steel LLC (“Uddeholm”) and the Association of German Specialty Cold Rolled Strip Producers (“AGS”) argue that hardened and tempered cold-rolled strip steel is a separate domestic like product;<sup>15</sup> respondents Kern-Leibers USA Inc. (“Kern-Leibers”) and AGS assert that texture-rolled steel is a separate domestic like product;<sup>16</sup> and BHP Steel Limited, New Zealand Steel Limited, and BHP Steel Americas LLC (“BHP”) argue that strapping steel is a separate domestic like product.<sup>17</sup>

As discussed below, we find that there is one domestic like product consisting of all certain cold-rolled steel products.

#### 1. Hardened and Tempered Cold-Rolled Strip

Sandvik, Uddeholm, and AGS argue that hardened and tempered cold-rolled strip steel is a separate domestic like product. They assert, among other things, that production of hardened and tempered articles requires heat treatment processes on a special line and that there are differences in physical characteristics, end uses, channels of distribution, customer perceptions, and prices between hardened and tempered strip and other cold-rolled steel articles.<sup>18</sup> The ACRSSP argues that hardened

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<sup>13</sup> Certain Cold-Rolled Steel Products from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, The Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela, Inv. Nos. 701-TA-422-425 and 731-TA-964-983 (Preliminary), USITC Pub. 3471 (Nov. 2001) (hereinafter “Preliminary Determinations”) at 5.

<sup>14</sup> Preliminary Determinations at 5-6. In response to requests in the preliminary phase investigations for exclusion of certain products from the investigation, the Commission explained that the scope of subject merchandise is determined by Commerce, not the Commission, and that the Commission does not have authority to exclude from its determination products that are within the scope. Preliminary Determinations at 5, and 5, n.20.

<sup>15</sup> Sandvik, Uddeholm and AGS’ Prehearing Brief at 5-16, Posthearing Brief at 2-10; AGS’ Prehearing Brief at 2, Posthearing Brief at 2. Uddeholm does not repeat its arguments made in the preliminary phase of these investigations that wood bandsaw steel is a separate like product. Commerce excluded certain grades of wood bandsaw steel from the scope at the time of the preliminary phase investigations, and excluded an additional grade of wood bandsaw steel from the scope in its final scope determination. 67 Fed. Reg. 47509, 47514. Two grades of wood bandsaw steel exported by Uddeholm to the United States remain in the scope. CR at I-18, n.29, and PR at I-16, n.29.

<sup>16</sup> Kern-Leibers’ Prehearing Brief at 3-12; AGS’ Prehearing Brief at 3, Posthearing Brief at 2.

<sup>17</sup> Australian and New Zealand Respondents’ Prehearing Brief at 11, n.12.

<sup>18</sup> They contend that hardened and tempered product is generally sold directly to end users, is recognized by producers and consumers as unique, cannot be substituted by other cold-rolled strip in applications requiring

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and tempered steel strip is not a separate domestic like product, but rather is part of the continuum of certain cold-rolled steel products.<sup>19</sup>

As noted above, where the domestically manufactured merchandise is made up of a continuum of similar products, the Commission generally does not consider each item of merchandise to be a separate domestic like product that is only “like” its counterpart in the scope. Although hardened and tempered strip is a specialty item that may be at the high end of the cold-rolled steel continuum with respect to certain factors in the Commission’s traditional analysis, we find that, on balance, there is not a sufficiently clear dividing line between cold-rolled hardened and tempered strip and other cold-rolled articles. Steel hardness exists along a continuum,<sup>20</sup> and there is an overlap of uses between certain cold-rolled hardened and tempered strip articles and other cold-rolled articles on the continuum.<sup>21</sup> Although the additional hardening and tempering steps may occur at facilities separate from those at which the other steps in production of the finished product occur, hardened and tempered steel products are otherwise produced in the same facilities as other cold-rolled steels using the same workers and processes.<sup>22 23</sup> Whereas certain hardened and tempered steels have distinct physical characteristics and

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<sup>18</sup> (...continued)

hardened and tempered strip, and is priced at multiples of the average price of cold-rolled strip generally. Sandvik and Uddeholm’s Prehearing Brief at 5-16, Posthearing Brief at 2-10; AGS’ Prehearing Brief at 2-3.

<sup>19</sup> ACRSSP’s Prehearing Brief and Posthearing Brief (see individual page citations, infra).

<sup>20</sup> Furnace treatments can be used to produce annealed steel, intermediate hardness steel, or hardened and tempered steel. ACRSSP’s Prehearing Brief at 9. Hardening and tempering are not the only ways in which the cold-rolled steel is heat treated or hardened. Unrelated to the hardening and tempering processes, the cold-rolling process itself hardens steel. Also, annealing, another heat treatment process, generally follows cold-rolling. The objective of annealing is to make steel that has been hardened by rolling more formable. Most cold-rolled products are annealed at temperatures of about 1250° F. CR at I-21, and PR at I-18. After annealing, the product is rolled on a temper mill to produce the desired hardness, flatness, and surface quality. CR at I-22, and PR at I-18. Although this is referred to as a “temper” mill, and one of its purposes is to produce desired hardness, that process, too, is unrelated to the hardening and tempering processes at issue here. The *hardening* that is at issue here involves increasing the temperature of the steel to about 1700° F then rapidly reducing the temperature. Id. In the *tempering* process that follows hardening, in which some of the strength and hardness produced in hardening are sacrificed to impart greater ductility, the steel is re-heated to about 800° F. Id. Not all steel strip that has been hardened is subsequently tempered by the cold-rolled manufacturer.

<sup>21</sup> ACRSSP’s Prehearing Brief at 6; Posthearing Brief at 9-10 and Attachment (Responses to Questions from the Commissioners and Staff) at 2. They claim, for example, that hardened products, tempered products, and other cold-rolled products are used in the production of handsaws, circular saws, spring applications, washers, and other types of blades and cutting instruments.

<sup>22</sup> Theis Precision Steel manufactures cold-rolled hardened and tempered products and other cold-rolled products in the same facilities with the same employees; Thompson Steel previously manufactured hardened and tempered products and other cold-rolled products in the same facilities, then moved its hardening and tempering operations to a separate facility because of space limitations. ACRSSP’s Prehearing Brief at 9-10. It is not contested that hardening and tempering operations require a costly dedicated line that is about 100 yards in length. See, e.g., George Deyman notes of July 15, 2002 meeting with certain respondents concerning hardened and tempered product (indicating that the special furnace would cost \*\*\*). An overlap even with respect to the special equipment used in hardening and tempering is shown by use of the special line in production of certain products other than hardened and tempered product; e.g., it is used in bluing and stress relieving other cold-rolled products. ACRSSP’s Posthearing Brief at 12. Bluing and stress relieving are heat treatments. In stress relieving, steel is heated to a temperature below the critical range to relieve stresses induced by flattening or other operations such as cold working, shearing, or gas cutting. It is not intended to alter the microstructure or mechanical properties significantly. USS, The Making, Shaping, and Treating of Steel (Pittsburgh, PA: Herbeck & Held, 1985) at 884. Steel can be heat

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customer perceptions when compared with commodity or other products at the low and medium range of the cold-rolled products continuum, such distinctions are blurred when the hardened and tempered product is compared to other specialty products. Similarly, distinctions on the basis of price diminish at the high end of the continuum.<sup>24</sup>

Accordingly, we find that, while hardened and tempered strip is distinguished from other cold-rolled items to the extent that it is subjected to special heat treatment processes on large, expensive equipment with only limited other uses, other aspects of the production are similar to those for other cold-rolled steel products. Additionally, although the item has particular physical characteristics and end uses, is distributed primarily to end users, and has a price premium, there is not a clear distinction between this category of steel products and the continuum of many different cold-rolled steels with unique specifications, processes, and end uses.<sup>25</sup> Thus, on balance, we find that hardened and tempered strip is not a separate domestic like product.

## 2. Texture-Rolled Carbon Steel

Kern-Liebers and AGS argue that texture-rolled carbon steel is a separate domestic like product. Kern-Liebers asserts that texture-rolled carbon steel is the only cold-rolled steel product that goes through a heat treating process known as patenting before it is cold-rolled and then is rolled in a mill with many more rollers than are commonly used in cold rolling, and that these processes result in a higher tensile strength than other cold-rolled steel, as well as differences in terms of cleanliness, inclusion level, microstructures, and surface finish necessary to conform to performance criteria of the Federal Motor Vehicle Safety Standards for seat belt life, output and endurance.<sup>26</sup> Kern-Liebers also asserts that the patenting and rolling processes require different equipment and workers, that other cold-rolled products cannot be used in the place of texture-rolled carbon steel, and that the article is perceived by customers as a unique specialty product, is sold primarily to end users for manufacture of seat belt springs, and is sold at prices higher than those for other cold-rolled steel products.

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<sup>22</sup> (...continued)

treated to form a uniform blue or black coating of oxide to provides some degree of protection and aesthetic properties. *Id.* at 1133. Other production equipment used to produce cold-rolled hardened and tempered strip that also is used to produce other cold-rolled products includes cold-rolling mills, annealing furnaces, and slitting lines. ACRSSP's Prehearing Brief at 9.

<sup>23</sup> ACRSSP's Prehearing Brief at 11-12.

<sup>24</sup> Showing overlap with respect to prices, Theis Precision Steel and Thompson Steel Company submitted invoices showing prices for certain cold-rolled products that are not hardened and tempered that are significantly higher than prices for certain hardened and tempered products. ACRSSP's Posthearing Brief at 14; Exhibit 1, ¶ 11; Exhibits 1-A, 1-B; Exhibit 2, ¶ 5; Exhibits 2-A, 2-B.

<sup>25</sup> See also Certain Flat-Rolled Carbon Steel Products from Argentina, Australia, Austria, Belgium, Brazil, Canada, Finland, France, Germany, Italy, Japan, Korea, Mexico, the Netherlands, New Zealand, Poland, Romania, Spain, Sweden, and the United Kingdom, Invs. Nos. 701-TA-319-332, 334, 336-342, 344, and 347-353 (Final) and 731-TA-573-579, 581-592, 594-597, 599-609, and 612-619 (Final), USITC Pub. 2664 (August 1993) at 92-93 (the Commission finding, for similar reasons, that a narrower product, hardened carbon steel, with a minimum carbon content of 0.6 percent, was in the same domestic like product as all cold-rolled steel, despite differences in final production processes, physical characteristics, and customer perceptions).

<sup>26</sup> Kern-Liebers' Prehearing Brief at 6.

We find that, while this item is distinguished from other cold-rolled items to the extent it is heat treated prior to being cold-rolled, other aspects of its production are similar to those for other cold-rolled steel products.<sup>27</sup> Additionally, although the item has particular physical characteristics and end uses,<sup>28</sup> is distributed primarily to end users, and has a price premium, we do not perceive a clear distinction between this narrow, specialized steel and the continuum of many different cold-rolled steels each with

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<sup>27</sup> Concerning the overlap of manufacturing processes between texture-rolled and other cold-rolled steel, Theis notes that, although its own patenting line is used only for the texture-rolled steel, it has been and can be used to produce carbon band saw steel. ACRSSP's Posthearing Brief at Exhibit 1 (Testimony of David Giapponi, Theis Manager of Operations). Theis also explains that texture-rolled steel undergoes many of the same manufacturing steps used to produce other cold-rolled steels, including rolling, annealing, rerolling, slitting, edging and/or deburring. It asserts that the manufacturing employees used to produce texture-rolled steel are also used to produce all other cold-rolled steel that Theis produces.

Concerning manufacture of the product, the Commission stated in the 1993 determination that "[t]his steel is distinguished from other high carbon steels to the extent that it is heat treated prior to being cold-rolled. However, most other production processes, facilities, and workers are the same for this and other types of cold-rolled steel." Certain Flat-Rolled Carbon Steel Products, USITC Pub. 2664, at 93-94. The Commission also found that "[s]eat belt retractor steel is produced in the same manufacturing facilities used to produce other hardened carbon steels, high carbon steels, and cold-rolled steels." USITC Pub. 2664, at 94, n.62. The record in these investigations supports the same finding.

<sup>28</sup> Domestic producers contend that the texture-rolled steel, including that manufactured by the domestic industry, is not used only in seat belt retractors, but also in the production of various automotive and non-automotive springs, and it is used in tape measure retractors, hose reels, vacuum cleaner retractors, clock mechanisms and starter recoil springs. ACRSSP's Posthearing Brief at Exhibit 1 (Testimony of David Giapponi, Theis' Manager of Operations).

some unique specifications, processes, and end uses.<sup>29 30 31</sup> Accordingly, we find that texture-rolled carbon steel is not a separate domestic like product.<sup>32</sup>

### 3. Strapping Steel

Respondent BHP argues in a footnote to its prehearing brief, as an alternative to requesting that imports from Australia not be cumulated, that a product it shipped in very small quantities during the period examined, strapping steel, be considered a separate domestic like product. BHP contends that this item has unique physical characteristics, dimensions and mechanical properties, that other cold-rolled items are not interchangeable for its use in heavy packaging, that it is supplied to different end users and

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<sup>29</sup> The Commission's finding in the 1993 determination is instructive in this regard.

Like other specialized high and hardened carbon steels (as well as specialized lower carbon steels), it has particular end uses, is primarily distributed to end users, and has a price premium reflecting the considerably greater energy usage required to produce these steels. While this product, like other types of specialized high carbon steel such as band saw steel, is near the upper boundary of the continuum of high carbon steels, we do not perceive a clear distinction between this narrow, specialized steel and the continuum of many different specialized cold-rolled steels with unique specifications, processes and end uses.

Certain Flat-Rolled Carbon Steel Products, USITC Pub. 2664, at 94. See also determinations in subsequent five-year reviews, Certain Carbon Steel Products From Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, The Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and The United Kingdom, Invs. Nos. AA1921-197 (Review), 701-TA-231, 319-320, 322, 325-328, 340, 342, and 348-350 (Review), and 731-TA-573-576, 578, 582-587, 604, 607-608, 612, and 614-618 (Review), USITC Pub. 3364 (Nov. 2000) at 7, n.24, and in the preliminary determinations in these investigations, USITC Pub. 4371 (Nov. 2001) at 2.

<sup>30</sup> To the extent Kern-Liebers asserts that there is no U.S. production of texture-rolled product, that assertion is contradicted by the statement on behalf of domestic producers that the product is produced in the United States. See Giapponi affidavit. If Kern-Liebers is requesting a domestic like product even narrower than all texture-rolled carbon steel, to include only that steel which conforms to standards for seat belt retractor steel, we find that the bases for rejecting the request are even greater than those stated above given the similarities, and absence of a clear dividing line, between seat belt retractor steel and other texture-rolled carbon steel. Moreover, if there is no domestic production of the texture-rolled product used in seat belt retractors, as Kern-Liebers claims, in the absence of a product that is "like" the subject imports, the "domestic like product" is the product "most similar in characteristics and uses with" the subject imports. 19 U.S.C. § 1677(10). As the Commission found in the preliminary phase of these investigations with respect to a cold-rolled item that was not produced in the United States, the product most similar in characteristics and uses with the product alleged not to be produced in the United States is certain cold-rolled steel products. See USITC Pub. 3471 at 5-6, n.21.

<sup>31</sup> Kern-Liebers also argues that, because texture-rolled carbon steel is excluded from the products subject to the President's Section 201 safeguard remedy (Proclamation No. 7529, 67 Fed. Reg. 10551 (2002), Exclusion X-205), including the product in the single domestic like product in these investigations, or subjecting it to import relief, would be inconsistent with the goal sought to be achieved by its exclusion from the Section 201 relief. Kern-Liebers' Prehearing Brief at 11-12. The Commission has stated repeatedly that it does not have authority to "exclude" from its antidumping and countervailing duty determinations products that are included within the scope. See Preliminary Determinations, USITC Pub. 3471 at 5, n.20; see also Softwood Lumber from Canada, Inv. Nos. 701-TA-414 (Final) and 731-TA-928 (Final), USITC Pub. 3509 (May 2002) at 28-29.

<sup>32</sup> See also Kern-Liebers v. United States, 19 CIT 87, 92 (1995) (the court finding, with respect to this specific product and arguments indistinguishable from those made here, that "the distinctions drawn by Kern-Liebers constitute 'minor differences' and do not merit a separate like product determination," and concluding that "the Commission's determination that seat belt retractor steel was within the upper range of the continuum of cold-rolled steel products is supported by substantial evidence").

distributors than other cold-rolled steel, and that it costs more than cold-rolled items with similar chemistry and dimensions.<sup>33</sup>

The Petitioners argue that strapping steel is not a separate domestic like product and assert that BHP's request should be denied for the reasons that formed the basis for the Commission's denial of the same request in the 1993 cold-rolled carbon steel investigation.<sup>34</sup>

We find, as did the Commission in the 1993 investigations, that, although strapping steel may be thought of as a "packing product" made with particular specifications, any differences between that item and other cold-rolled articles do not provide a clear dividing line.<sup>35</sup> Strapping steel is interchangeable with other cold-rolled flat products that meet the required certification standard.<sup>36</sup> Strapping steel falls somewhere in the middle of the continuum of low to high carbon steel products, is produced in the same facilities and by the same workers, is sold through the same distribution channels, and is sold at prices similar to those of other specialized cold-rolled carbon steel products.<sup>37</sup> There is no new information on this record that would warrant a determination contrary to the one in the 1993 investigation concerning strapping steel. Accordingly, we find that strapping steel is not a separate domestic like product.

#### **4. Conclusion**

While the record indicates some variations in characteristics and uses, channels of distribution, manufacturing processes, and pricing between and among the above mentioned individual types and grades of cold-rolled steel, more importantly, we find those variations are outweighed by broad similarities. Any differences do not constitute clear dividing lines among individual items, particularly given the spectrum of widely varying products that constitute cold-rolled steel products. Accordingly, we find the domestic like product to be certain cold-rolled steel products, coextensive with the scope of these investigations.

#### **D. Domestic Industry and Related Parties**

##### **1. In General**

Section 771(4) of the Act defines the relevant industry as "the producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes the major proportion of that product."<sup>38</sup> In defining the domestic industry, the Commission's general practice has been to include in the industry all of the domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.<sup>39</sup> Based on our domestic like product determination, we determine that there is a single domestic industry consisting of all U.S. producers of certain cold-rolled steel products.

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<sup>33</sup> Australian and New Zealand Respondents' Prehearing Brief at 11, n.12.

<sup>34</sup> Bethlehem, et al. Prehearing Brief at 13.

<sup>35</sup> Certain Flat-Rolled Carbon Steel Products, USITC Pub. 2664, at 94.

<sup>36</sup> Certain Flat-Rolled Carbon Steel Products, USITC Pub. 2664, at 94.

<sup>37</sup> Certain Flat-Rolled Carbon Steel Products, USITC Pub. 2664, at 94.

<sup>38</sup> 19 U.S.C. § 1677(4)(A).

<sup>39</sup> See United States Steel Group v. United States, 873 F. Supp. 673, 681-684 (Ct. Int'l Trade 1994), *aff'd*, 96 F.3d 1352 (Fed. Cir. 1996).

## 2. Related Parties

We must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to 19 U.S.C. § 1677(4)(B). That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or which are themselves importers. Exclusion of such a producer is within the Commission's discretion based upon the facts presented in each case.<sup>40</sup>

CSI is half owned by Kawasaki, a Japanese producer and exporter of subject merchandise, and half owned by CIA Vale do Rio Doce, a Brazilian firm.<sup>41</sup> CSN is wholly owned by subject producer CSN of Brazil.<sup>42</sup> National is \*\*\* by NKK, a Japanese producer of subject merchandise.<sup>43</sup> Duferco Farrell ("Duferco") is owned by Duferco Investment Services, which is also the majority owner of Duferco La Louviers SA, a subject producer in Belgium.<sup>44</sup> Ispat Inland is wholly owned by Ispat International, N.V., a Netherlands firm that is the parent company of Ispat Industries, an Indian producer of the subject merchandise.<sup>45</sup> Theis is wholly owned by F.G. Theis Kaltwalzwerke, a German firm.<sup>46</sup> Thomas Steel Strip is owned by the Corus Group, which is also the parent of the sole producer of cold-rolled steel in the Netherlands, Corus Staal BV.<sup>47</sup> UPI is one-half owned by Pohang Iron & Steel Co. Ltd. (POSCO), a Korean producer of subject steel products.<sup>48</sup> These eight firms may be related parties under the related parties provision of the statute.<sup>49</sup> Consequently, we consider whether "appropriate

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<sup>40</sup> Sandvik AB v. United States, 721 F. Supp. 1322, 1331-1332 (Ct. Int'l Trade 1989), aff'd without opinion, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude related parties include: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, *i.e.*, whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and (3) the position of the related producers vis-a-vis the rest of the industry, *i.e.*, whether inclusion or exclusion of the related party will skew the data for the rest of the industry. See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (Ct. Int'l Trade 1992), aff'd without opinion, 991 F.2d 809 (Fed. Cir. 1993). The Commission also has considered the ratio of import shipments to U.S. production for related producers and whether the primary interests of the related producers lie in domestic production or in importation. See, e.g., Melamine Institutional Dinnerware from China, Indonesia, and Taiwan, Inv. Nos. 731-TA-741-743 (Final), USITC Pub. 3016 (Feb. 1997) at 14 n.81.

<sup>41</sup> CR and PR at Table III-1.

<sup>42</sup> Id.

<sup>43</sup> Id.

<sup>44</sup> Duferco La Louviere did not respond to the Commission's foreign producer questionnaire, but is identified in Iron and Steel Works of the World as 75-percent owned by Duferco Investment SA.

<sup>45</sup> CR at VII-19, and PR at VII-7; and CR and PR at Table III-1.

<sup>46</sup> CR and PR at Table III-1.

<sup>47</sup> \*\*\*.

<sup>48</sup> CR and PR at Table III-1.

<sup>49</sup> 19 U.S.C. § 1677(4)(B)(ii)(II), (III). Although each related party in the subject countries is not necessarily an exporter of subject merchandise, we assume that all are for purposes of our analysis.

circumstances” exist to exclude any of these companies from the domestic industry.<sup>50</sup> CSN accounted for \*\*\* percent of total domestic production in 2001, Duferco for \*\*\* percent, Ispat Inland for \*\*\* percent, National for \*\*\* percent, Theis for \*\*\* percent, Thomas Strip for \*\*\* percent, and UPI for \*\*\* percent.<sup>51</sup> None of these domestic producers directly imported certain cold-rolled steel from subject countries during the period examined.<sup>52</sup>

None of these producers appears to operate in a manner different from other domestic producers as a result of its relationship with the foreign producer or importer parent. Although the financial performance of \*\*\* exceeded the industry average during all or most of the period examined,<sup>53</sup> there is no indication that this relatively better performance resulted from their related party status. All of these four producers except \*\*\*, which, as noted, accounted for only \*\*\* percent of domestic production in 2001, support the petition.<sup>54</sup> The financial performance of \*\*\* was consistently weaker than that of the remainder of the industry. \*\*\*, and \*\*\* support the petition.<sup>55</sup> \*\*\* the petition, but as noted, \*\*\*, it accounted for \*\*\* percent of total domestic production in 2001, and its financial performance was \*\*\* the industry average.<sup>56</sup> Accordingly, the interests of all these related party firms appear to be those of domestic producers.

Only one producer, \*\*\*, was the importer of record of subject merchandise during the period, importing \*\*\* short tons of cold-rolled steel from Japan in \*\*\* and \*\*\* short tons in 2001.<sup>57</sup> Although \*\*\* is a related party on that basis, we find that appropriate circumstances do not exist to exclude \*\*\* from the domestic industry. The financial performance of \*\*\* was worse than the industry average in 2000, 2001, and the interim 2002 period,<sup>58</sup> it supports the petition,<sup>59</sup> and its subject imports were an insignificant percentage of the company’s total production.<sup>60</sup> Accordingly, the interests of \*\*\* appear to be those of a domestic producer.

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<sup>50</sup> Because CSI did not respond to the Commission’s producer questionnaire in these final phase investigations, its data are not among the industry data summarized in the report, and, therefore, the issue of whether to exclude CSI from the domestic industry is moot.

<sup>51</sup> CR and PR at Table III-1.

<sup>52</sup> CR and PR at Table III-11. \*\*\*. CR and PR at Table III-11. \*\*\*. CR and PR at Tables III-1 and III-11. The record indicates that three other producers, \*\*\*, also purchased subject imports during the period examined.

These companies would be “related parties” if their purchases of subject imports were so large as to amount to “direct or indirect control” of an importer or exporter of subject imports during the period examined. Certain Cut-to-Length Steel Plate from the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia, Invs. Nos. 701-TA-387-392 (Preliminary) and 731-TA-815-822 (Preliminary), USITC Pub. 3181 (Apr. 1999) at 12. The quantities of purchases of each of these firms do not appear large enough to warrant such a finding, nor is there any other basis for such a finding. See CR and PR at Table III-11. Consequently, we do not find that these companies are related parties on the basis of their purchases.

<sup>53</sup> CR and PR at Table VI-7.

<sup>54</sup> CR and PR at Table III-1.

<sup>55</sup> CR and PR at Table III-1.

<sup>56</sup> CR at III-25 (no imports), and PR at III-17; CR and PR at Table III-1 (\*\*\*) petition, share of domestic production); and CR and PR at Tables VI-2 and VI-7 (financial performance).

<sup>57</sup> CR at III-25, n.33, and PR at III-17, n.33.

<sup>58</sup> CR and PR at Table VI-7.

<sup>59</sup> CR and PR at Table III-1.

<sup>60</sup> CR at III-25, n.33 and PR at III-17, n.33; and CR and PR at Tables III-11.

For these reasons, we do not find that appropriate circumstances exist to exclude any domestic producer from the domestic industry. Accordingly, we define a single domestic industry in these investigations, encompassing all U.S. producers of certain cold-rolled steel products.

## II. NEGLIGIBLE IMPORTS

Imports from a subject country corresponding to a domestic like product that account for less than three percent of all such merchandise imported into the United States during the most recent twelve months for which data are available preceding the filing of the petition shall be deemed negligible.<sup>61</sup> The statute further provides that imports from a single country which comprise less than three percent of total imports of such merchandise may not be considered negligible if there are several countries subject to investigation with negligible imports and the sum of such imports from all those countries in the aggregate accounts for more than seven percent of the volume of all such merchandise imported into the United States.<sup>62</sup>

In the case of countervailing duty investigations involving developing countries, the statute further provides that the negligibility limits are four percent and nine percent, rather than three percent and seven percent.<sup>63</sup> The statute defines “developing country” as any country so designated by the U.S. Trade Representative (“USTR”).<sup>64</sup>

The Commission is authorized to make “reasonable estimates on the basis of available statistics” of pertinent import levels for purposes of deciding negligibility.<sup>65</sup>

Under the statute, the applicable period for determining negligibility is the most recent 12-month period prior to the filing of the petition for which data are available, which, in these investigations, is September 1, 2000 through August 31, 2001.

### A. The Antidumping Investigations

Negligibility is an issue for eleven of the twenty subject countries that are individually below the three percent negligibility threshold during the relevant twelve-month period: Australia with an import share at \*\*\* percent of total imports, Germany at \*\*\* percent, India at \*\*\* percent, the Netherlands at \*\*\* percent, New Zealand at \*\*\* percent, Spain at \*\*\* percent,<sup>66</sup> Sweden at \*\*\* percent, Taiwan at \*\*\* percent, Thailand at \*\*\* percent, Turkey at \*\*\* percent, and Venezuela at \*\*\* percent.<sup>67</sup> However, the combined import share of these eleven countries is 12.8 percent and, thus, exceeds the seven percent

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<sup>61</sup> 19 U.S.C. § 1677(24)(A)(i).

<sup>62</sup> 19 U.S.C. § 1677(24)(A)(ii).

<sup>63</sup> 19 U.S.C. § 1677(24)(B).

<sup>64</sup> 19 U.S.C. § 1677(36)(A).

<sup>65</sup> 19 U.S.C. § 1677(24)(C). See also The Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316, Vol. 1 at 186 (1994) (“SAA”).

<sup>66</sup> Imports from Spain are for calendar year 2001 and have been adjusted to exclude imports preliminarily found by Commerce to be outside the scope of these investigations based on the importer’s efforts to have the imports reclassified. Memorandum INV-Z-139 at IV-3, n.4; and PR at Table IV-3, n.4.

<sup>67</sup> Memorandum INV-Z-134 at Table IV-3, and PR at Table IV-3.

statutory negligibility threshold.<sup>68</sup> Accordingly, none of the subject imports from these countries are negligible for purposes of these antidumping investigations.

## B. The Countervailing Duty Investigations

The petition included countervailing duty allegations against four countries: Argentina, Brazil, France, and Korea. France (\*\*\*) percent of total imports) and Korea (\*\*\*) percent) exceed the applicable negligibility level on an individual basis.<sup>69</sup> Argentina and Brazil have been designated developing countries by the U.S. Trade Representative,<sup>70</sup> but each exceeds the four percent individual-country negligibility level for developing countries: Argentina with a \*\*\* percent share of total imports, and Brazil with an \*\*\* percent share of total imports.<sup>71</sup> Therefore, none of the subject imports from these countries are negligible for purposes of these countervailing duty investigations.

## III. CUMULATION

For purposes of evaluating the volume and price effects for a determination of material injury by reason of the subject imports, section 771(7)(G)(i) of the Act requires the Commission to assess cumulatively the volume and effect of imports of the subject merchandise from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with the domestic like products in the U.S. market.<sup>72</sup> In assessing whether subject imports compete with each other and with the domestic like product,<sup>73</sup> the Commission has generally considered four factors, including:

- (1) the degree of fungibility between the subject imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;
- (2) the presence of sales or offers to sell in the same geographic markets of subject imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and
- (4) whether the subject imports are simultaneously present in the market.<sup>74</sup>

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<sup>68</sup> Memorandum INV-Z-134 at Table IV-3, and PR at Table IV-3.

<sup>69</sup> Memorandum INV-Z-134 at Table IV-3, and PR at Table IV-3.

<sup>70</sup> 63 Fed. Reg. at 29948 (June 2, 1998).

<sup>71</sup> Memorandum INV-Z-134 at Table IV-3, and PR at Table IV-3.

<sup>72</sup> 19 U.S.C. § 1677(7)(G)(i).

<sup>73</sup> The SAA expressly states that “the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition.” SAA, H.R. Rep. 103-316, vol. I at 848 (1994), citing Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int’l Trade 1988), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

<sup>74</sup> See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Inv. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986) at 8 n.29, aff’d sub nom. Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int’l Trade), aff’d, 859 F.2d 915 (Fed. Cir. 1988).

While no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the subject imports compete with each other and with the domestic like product.<sup>75</sup> Only a “reasonable overlap” of competition is required.<sup>76</sup>

The threshold for cumulation is satisfied in that the petition was filed with respect to imports from all subject countries on the same day. We first address country-specific arguments on cumulation. We conclude there is a reasonable overlap of competition among the subject imports and with the domestic like product for all subject imports, except with respect to Australia.

### A. Australia

Virtually all subject imports from Australia are full-hard steel,<sup>77</sup> a substrate form of cold-rolled steel, that enter the United States through the West region.<sup>78</sup> Importantly, the subject imports from Australia entering the United States through the West region were sold entirely on the open market to two end user customers located in the West region, \*\*\* and \*\*\*.<sup>79</sup> This establishes that imports of full-hard steel from Australia entering the United States through the West region in fact remained in the West region, and were not sold in other geographic regions.

Full-hard steel supply in the West region generally is limited,<sup>80</sup> and overlap in the West region between the Australian product, other subject imports, and the domestic like product is very limited. Although 53.6 percent of U.S. production is of full-hard steel,<sup>81</sup> only \*\*\* percent of U.S. producers’ full-hard shipments in 2001 were commercial shipments,<sup>82</sup> and only \*\*\* percent of domestic producers’ shipments of all certain cold-rolled steel products were in the West region in 2001.<sup>83</sup> We find, therefore, that the record does not establish a reasonable overlap of competition between the domestic like product and the subject merchandise from Australia.<sup>84 85</sup>

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<sup>75</sup> See, e.g., *Wieland Werke, AG v. United States*, 718 F. Supp. 50 (Ct. Int’l Trade 1989).

<sup>76</sup> See *Goss Graphic System, Inc. v. United States*, 33 F. Supp. 2d 1082, 1087 (Ct. Int’l Trade 1998) (“cumulation does not require two products to be highly fungible”); *Mukand Ltd. v. United States*, 937 F. Supp. 910, 916 (Ct. Int’l Trade 1996); *Wieland Werke*, 718 F. Supp. at 52 (“Completely overlapping markets are not required.”).

<sup>77</sup> Memorandum INV-Z-134 at Table C-8, and PR at Table C-8; and CR and PR at Table IV-7C.

<sup>78</sup> In 2001, \*\*\* percent of subject imports from Australia were full-hard steel, and \*\*\* percent of subject imports from Australia were to the West region. Memorandum INV-Z-134 at Table IV-5, and PR at Table IV-5. See also Australian Respondent’s Posthearing Brief at 1.

<sup>79</sup> Australian and New Zealand Respondents’ Posthearing Brief at 5.

<sup>80</sup> See, e.g., Hearing Transcript at 242-243 (testimony of Mr. Catterlin).

<sup>81</sup> CR and PR at Tables C-1 and C-3 (total domestic cold-rolled steel production was 33.1 million short tons in 2001, of which total full-hard steel production accounted for 17.7 million short tons).

<sup>82</sup> CR and PR at Table C-3; and Memorandum INV-Z-134 at Table C-8, and PR at Table C-8. Total U.S. shipments of full-hard steel were 17.6 million short tons in 2001, while commercial shipments were \*\*\* short tons in 2001.

<sup>83</sup> Australian and New Zealand Respondents’ Prehearing Brief at 24-25.

<sup>84</sup> We also find that the extent of overlap of competition between the imports from Australia and the domestic like product was further limited during the period examined by the significant reduction of production at UPI, a West Coast producer of the full-hard product, following a fire at UPI’s facilities. CR at VI-3, n.4, and PR at VI-3, n.4. Much of the full-hard steel from Korea was purchased by POSCO’s affiliate, UPI, in response to a May 31, 2001 fire

(continued...)

## B. The Netherlands

Subject imports from the Netherlands included a variety of types of cold-rolled steel, including not only full-hard steel but also substantial volumes of the common products for which the Commission collected pricing data.<sup>86</sup> Sales of cold-rolled steel from the Netherlands were dispersed throughout the United States,<sup>87</sup> were sold to both end users and distributors,<sup>88</sup> and were present in the market throughout the period examined.<sup>89</sup> The majority of imports from the Netherlands were concentrated in the two HTS statistical classifications that account for the majority of subject imports.<sup>90</sup> Moreover, while Corus asserts, as noted above, that its exports to the United States other than full-hard were “in many instances” custom-tailored to meet end users’ individual requirements,<sup>91</sup> it does not allege that there is no overlap of competition with respect to that production or the other instances in which production was not custom tailored.

## C. New Zealand

While imports from New Zealand entered the West region exclusively, the product mix of imports from New Zealand, unlike imports from Australia, was not limited to full-hard steel; subject

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<sup>84</sup> (...continued)

that curtailed UPI’s captive production until February 2002. CR and PR at Tables III-4 and III-11.

<sup>85</sup> Moreover, there is a very limited degree of fungibility between cold-rolled steel from Australia and cold-rolled steel from the other subject countries. As indicated above, nearly all subject imports from Australia were of full-hard steel. No other country has the same degree of concentration. CR and PR at Tables C-8, IV-7C (between January 1999 and March 2002, full-hard steel accounted for \*\*\* percent of subject imports from Australia, while full-hard steel accounted for \*\*\* percent of subject imports from the Netherlands and \*\*\* percent of subject imports from Korea). Further, Australia was, along with Spain, one of only two subject suppliers of cold-rolled steel for which there were no reported sales of the common varieties of cold-rolled steel for which the Commission collected price data. CR at V-5, and PR at V-6. Second, imports from Australia were concentrated geographically in the West region (99.7 percent), and virtually absent from the geographic markets of the East, Gulf, and Great Lakes through which more than 80 percent of subject imports entered. Memorandum INV-Z-134 at Table IV-5, and PR at Table IV-5. Only one small-volume supplier, New Zealand, had a comparable level of regional concentration on the West Coast. Id. Third, 100 percent of imports from Australia were sold directly to end users. Only Spain and Germany had a similar concentration in end user sales, and neither of those suppliers sold any cold-rolled steel to galvanizers (which accounted for \*\*\* percent of Australia’s end user sales). CR and PR at Table III-7. Thus, even though imports from Australia were present throughout the period examined (Memorandum INV-Z-134 at Table IV-6, and PR at Table IV-6), the record does not establish a reasonable overlap of competition between Australia and the other subject countries.

<sup>86</sup> CR at V-4, and PR at V-3.

<sup>87</sup> Subject imports from the Netherlands entered the United States not only through the West (73.6 percent) but also through the Great Lakes (20.9 percent) and the East (5.4 percent). Memorandum INV-Z-134 at Table IV-5, and PR at Table IV-5.

<sup>88</sup> In 2001, \*\*\* percent of subject imports from the Netherlands were sold to distributors and \*\*\* percent were sold to end users. CR and PR at Table III-7.

<sup>89</sup> Subject imports from the Netherlands entered the United States in every month except one between January 1999 and March 2002. Memorandum INV-Z-134 at Table IV-6, and PR at Table IV-6.

<sup>90</sup> CR at IV-4, and PR at IV-3.

<sup>91</sup> Corus acknowledges that \*\*\* percent of its shipments during the period examined have been of full-hard steel. The Netherlands Respondents’ Prehearing Brief at 8.

imports from New Zealand, instead, were of “commodity-grade cold-rolled annealed sheet products.”<sup>92</sup> Moreover, channels of distribution for subject imports from New Zealand were not limited to sales to end users, \*\*\*, but, as was the case for most other countries, were in significant part sales to distributors.<sup>93</sup> Thus, we find a reasonable overlap of competition between the subject imports from New Zealand and the remaining subject imports and with the domestic like product.

#### **D. Russia**

The Russian producer’s argument that imports from Russia should not be cumulated with imports from the other subject countries is focused primarily on the Comprehensive Steel Agreement between Commerce and the Ministry of Trade of the Russian Federation, signed on July 12, 1999, which it asserts severely limits the volume of imports from Russia through 2004.<sup>94</sup> The Commission has previously concluded that, when it finds that the criteria it traditionally examines indicate a reasonable overlap of competition between subject imports that are under quantitative restrictions, on the one hand, and imports from other subject countries and the domestic like product, on the other, cumulation is warranted.<sup>95</sup> The record establishes that, notwithstanding the 1999 agreement, subject imports from Russia continued to enter the U.S. market in competition with the domestic like product and imports from other subject countries. The Russian producer does not establish that the traditional cumulation factors are inapplicable.

#### **E. Spain**

Subject imports from Spain were geographically dispersed and present in the U.S. market throughout much of the period examined.<sup>96</sup> The Spanish respondents argue essentially that their volume of imports is too insignificant to permit meaningful overlap of competition or, therefore, cumulation.<sup>97</sup> The significance of the volume of imports from Spain is addressed in the Negligibility discussion, *supra*. On balance, we find that the criteria for cumulation are met with regard to the subject imports from Spain.

#### **F. Subject Countries Other Than Australia**

We next examine the traditional cumulation factors with respect to imports from the subject countries other than Australia.

*Fungibility.* A majority of domestic producers reported that the U.S. cold-rolled products and each individual country’s subject imports are always or frequently interchangeable.<sup>98</sup> A majority of importers reported that the U.S. cold-rolled products and subject imports from 17 of the 19 subject

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<sup>92</sup> Australian and New Zealand Respondents’ Prehearing Brief at 24-25.

<sup>93</sup> See CR and PR at Table III-7.

<sup>94</sup> Russian Respondent’s Prehearing Brief at 1-5 (arguing as well that the Section 201 safeguard remedy also limits its imports).

<sup>95</sup> See Honey from Argentina and China, Inv. Nos. 701-TA-402, 731-TA-892-893 (Final), USITC Pub. 3470 (Nov. 2001) at 15, n.96.

<sup>96</sup> Memorandum INV-Z-134 at Tables IV-5 (imports entered through all regions except the West) and IV-6 (imports entered in 24 of 39 months), and PR at Tables IV-5 and IV-6.

<sup>97</sup> E.g., Spanish Respondents’ Posthearing Brief at 1-2.

<sup>98</sup> CR and PR at Table II-6.

countries other than Australia are always or frequently interchangeable, and a majority reported that imports from the other two subject countries, Russia and Sweden, are always, frequently, or sometimes interchangeable.<sup>99</sup> Although the scope of these investigations covers a wide variety of cold-rolled products, classifiable under 46 HTSUS statistical categories, 70 percent of the subject imports enter the United States under two statistical reporting numbers; these two classifications also account for a majority of the subject imports from 17 of the 19 subject countries and for nearly half of the subject imports from one of the other two countries.<sup>100</sup> Inclusion under specific tariff classifications is by no means determinative of fungibility; however, the concentration of subject imports in these, among the many subject classifications, is indicative of a degree of commonality among the subject imports.

Information from purchasers on direct comparisons between domestic and subject imported products also indicates that overall the domestic and subject imported products generally are comparable in quality, but that the U.S. product is likely to be considered inferior to German and Japanese cold-rolled steel, somewhat inferior to Belgian, French, and Korean cold-rolled steel, and superior to Russian, South African, and Turkish cold-rolled steel.<sup>101</sup> Purchasers viewed U.S. mills as generally comparable to most foreign suppliers in terms of availability (somewhat superior to subject imports from Argentina, Belgium, Brazil, China, India, Russia, and South Africa; somewhat inferior to subject imports from France, the Netherlands, and Sweden).<sup>102</sup> Importers reported that their average lead time, between order and delivery, was 102 days, whereas domestic producers reported their average lead time is 48 days.<sup>103</sup>

*Geographic Overlap.* Cold-rolled steel products produced in the United States are shipped nationwide.<sup>104</sup> Subject imports from 13 of the 19 subject countries other than Australia entered every region during the period examined.<sup>105</sup> Imports from five of the subject countries—the Netherlands, South Africa, Spain, Turkey, and Venezuela—entered three of the four regions.<sup>106</sup> Only New Zealand entered a single region, the West region, during the period examined.<sup>107</sup> The West region was also an important entry point for imports from several of the other subject countries, including Belgium, China, Japan, Korea, the Netherlands, Taiwan, and Thailand.<sup>108</sup>

Subject imports from India and Venezuela also were geographically concentrated, albeit to a lesser extent; 89.2 percent of subject imports from India and 95.0 percent of subject imports from Venezuela were shipped into the Gulf region.<sup>109</sup> Again, however, the Gulf region was an important entry

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<sup>99</sup> CR and PR at Table II-6.

<sup>100</sup> Memorandum INV-Z-134 at Table IV-4, and PR at Table IV-4.

<sup>101</sup> CR and PR at Table II-5; and CR at II-13 through II-15, and PR at II-9 through II-11. There were no comparisons for Spain and Venezuela.

<sup>102</sup> CR and PR at Table II-5; CR at II-13 through II-15, and PR at II-9 through II-11.

<sup>103</sup> CR at II-10, and PR at II-6 (based on U.S. producers' reported increases in lead time over the period).

<sup>104</sup> Memorandum INV-Z-134 at Table IV-5, and PR at Table IV-5. Shipments to the West region are limited however, and estimated at about \*\*\* percent of total domestic producers' commercial shipments. Australian and New Zealand Respondents' Prehearing Brief at 24-25.

<sup>105</sup> Memorandum INV-Z-134 at Table IV-5, and PR at Table IV-5.

<sup>106</sup> Memorandum INV-Z-134 at Table IV-5, and PR at Table IV-5.

<sup>107</sup> Memorandum INV-Z-134 at Table IV-5, and PR at Table IV-5.

<sup>108</sup> Memorandum INV-Z-134 at Table IV-5, and PR at Table IV-5.

<sup>109</sup> Memorandum INV-Z-134 at Table IV-5, and PR at Table IV-5.

point for other subject imports, including Argentina, Brazil, China, Japan, Korea, Russia, South Africa, Thailand, Turkey and Venezuela.<sup>110</sup>

*Channels of Distribution.* A large share of domestically produced merchandise is consumed internally or transferred to affiliates for extensive downstream processing. Of the commercial shipments by U.S. producers, about 63 percent are sold to end users (such as appliance and automotive manufacturers), and the remainder to distributors/service centers.<sup>111</sup> Subject imports were sold largely to distributors/service centers,<sup>112</sup> although subject imports from Germany and Spain were sold largely or exclusively to end users.<sup>113</sup>

*Simultaneous Presence.* Domestically produced certain cold-rolled steel was present throughout the United States during the period examined.<sup>114</sup> Imports from 9 of the 19 subject countries other than Australia entered in each of the 39 months of the period examined; imports from another 4 countries entered in more than 30 of the 39 months covered.<sup>115</sup> Imports from Argentina and India entered in 29 of the 39 months; Turkey, 26 of the 39 months; Venezuela and Spain, 24 of the 39 months; and Thailand 19 of the 39 months.<sup>116</sup> Accordingly, imports from each subject country other than Thailand entered in at least a majority of the months of the period examined.

## **G. Conclusion**

For all subject imports except those from Australia, consideration of the four factors traditionally addressed in a cumulation analysis shows that there is a reasonable overlap of competition among the subject imports and between the subject imports and the domestic like product. Many respondents have argued that their products are not fungible because their imports are concentrated in a few product categories. These categories, however, include the same HTSUS classifications for a significant percentage of imports from each country. Both producers and importers agree there is in general at least a fair amount of interchangeability among domestic products and subject imports. In terms of geographic overlap there is some variation, especially regarding India, New Zealand, and Venezuela. The record indicates, however, that there was a reasonable overlap of competition geographically, including in regions in which the concentrated subject imports entered. We also find that there was a reasonable overlap among the subject imports and the domestic like product in terms of channels of distribution. Regarding simultaneous presence, we find that subject imports from most countries were present for most of the period. Accordingly, we find that there is a reasonable overlap of competition among all subject countries and between the subject imports and the domestic like product, except Australia.

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<sup>110</sup> Memorandum INV-Z-134 at Table IV-5, and PR at Table IV-5.

<sup>111</sup> CR and PR at Table III-7.

<sup>112</sup> CR and PR at Table III-7.

<sup>113</sup> CR and PR at Table III-7.

<sup>114</sup> CR at IV-18, and PR at IV-15.

<sup>115</sup> Memorandum INV-Z-134 at Table IV-6, and PR at Table IV-6.

<sup>116</sup> Id.

#### IV. CONDITIONS OF COMPETITION

Several conditions of competition pertinent to the certain cold-rolled steel products industry are relevant to our analysis.<sup>117</sup> The following three sections address (1) the statute's captive production provision, (2) other conditions of competition, and (3) the President's recent import remedy under Section 201 of the Trade Act of 1974.

##### A. Captive Production

The domestic industry captively consumes a significant share of its production of the domestic like product in the manufacture of downstream articles.<sup>118</sup> Thus, we have considered whether the statutory captive production provision requires us to focus our analysis primarily on the merchant market when assessing market share and the factors affecting the financial performance of the domestic industry.<sup>119</sup> The Petitioners argue that the provision is met; respondents argue that the provision is not met.<sup>120</sup>

We examine the individual criteria of the provision as follows. We find that the threshold provision of the captive production provision has been met, because domestic producers internally transfer significant production of the domestic like product for captive consumption and sell significant production of the domestic like product in the merchant market. Internal consumption accounted for 48.0 percent of the volume of U.S. producers' U.S. shipments in 2001, commercial shipments accounted for

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<sup>117</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>118</sup> CR and PR at Table III-5.

<sup>119</sup> The captive production provision, 19 U.S.C. § 1677(7)(C)(iv), provides:

- (iv) CAPTIVE PRODUCTION—If domestic producers internally transfer significant production of the domestic like product for the production of a downstream article and sell significant production of the domestic like product in the merchant market, and the Commission finds that—
  - (I) the domestic like product produced that is internally transferred for processing into that downstream article does not enter the merchant market for the domestic like product,
  - (II) the domestic like product is the predominant material input in the production of that downstream article, and
  - (III) the production of the domestic like product sold in the merchant market is not generally used in the production of that downstream article,

then the Commission, in determining market share and the factors affecting financial performance set forth in clause (iii), shall focus primarily on the merchant market for the domestic like product.

<sup>120</sup> E.g., Bethlehem, et al. Prehearing Brief at 23-38; Joint Respondents' Prehearing Brief at Exhibit 6; see also Nucor, et al. Prehearing Brief at 24 (arguing that the captive production provision is met but asserting that there would not be a significant difference between application of the provision, and recognition that internal consumption is an important condition of competition).

37.2 percent, and transfers to related parties accounted for 14.9 percent.<sup>121</sup> We find that the first statutory criterion is met in that virtually none of the certain cold-rolled steel transferred for processing entered the merchant market for the domestic like product. Instead, it was processed into downstream articles.<sup>122</sup> All firms that internally transferred cold-rolled steel reported that all of the captive consumption was used in the production of downstream products in 2001, primarily coated products (71.8 percent) and tin mill products (\*\* percent).<sup>123</sup>

We also find that the second statutory criterion has been met, as certain cold-rolled steel is the predominant material input for the relevant downstream articles. Cold-rolled steel in 2001 accounted for 65 to 95 percent of the raw material costs of the downstream product.<sup>124</sup>

Consideration of the third factor,<sup>125</sup> whether the domestic like product sold in the merchant market is not generally used in the production of the downstream article produced from internal transfers, requires us first to determine whether those domestic producers' transfers of the domestic like product to related entities constitute internal transfers as opposed to merchant market sales.

We find that certain transfers to related parties more closely resemble captive production and that other transfers to related parties more closely resemble merchant market sales. First, we find domestic producers' transfers of the domestic like product to related parties for toll production of downstream products to be in the nature of internal transfers and, therefore, we include them among captive production. Under tolling arrangements, the cold-rolled steel is not sold to, and title never passes to, the toller. The record in these investigations indicates that the toller obtains its substrate exclusively from the tollee and the tollee retains the marketing rights to the downstream product. Accordingly, we do not treat these toll transfers as merchant market sales.

We also find that transfers to \*\*\* from its joint venture parent, \*\*\*, and transfers to \*\*\* from its joint venture parent, \*\*\*, are more in the nature of internal transfers than merchant market sales and, therefore, include the transfers within captive production. These transfers are distinguished from other related party transfers in that: (1) the domestic cold-rolled producer parent in each case retains the marketing rights to the downstream product produced by the joint venture from the cold-rolled steel,<sup>126</sup> (2) the joint venture parents are the sole source of the cold-rolled product purchased, and (3) prices for

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<sup>121</sup> CR and PR at Table III-6. We find the internal transfers and the merchant market sales to be significant both prior to and following our findings apportioning related party transfers between captive production and merchant market sales.

<sup>122</sup> CR at III-18, and PR at III-13.

<sup>123</sup> CR and PR at Table III-8; and CR at III-18, and PR at III-13. The minor changes in these percentages that would result from inclusion of a portion of the related party transfers in captive consumption do not affect our finding that this factor is met.

<sup>124</sup> CR at III-18, and PR at III-13. The minor changes in these percentages that would result from inclusion of a portion of the related party transfers in captive consumption do not affect our finding that this factor is met.

<sup>125</sup> See Certain Hot Rolled Steel Products From Japan, Inv. No. 731-TA-807, USITC Pub. 3202 (June 1999) at 31-35, 37-38, in which Commissioners Hillman, Miller, and Koplán elaborated on their interpretation of the third captive production factor.

<sup>126</sup> Memorandum INV-Z-139 at Table III-9, and PR at Table III-9. Although the domestic producer retains the marketing rights for the downstream product, \*\*\* retains title.

the cold-rolled product are not based on the market price.<sup>127</sup> In contrast, we find that related party transfers in which one or more of these factors is absent are more akin to merchant market sales than to captive consumption and, therefore, we view such sales as part of the merchant market. The related party transfers included as merchant market sales are \*\*\* transfers to \*\*\*, \*\*\* transfers to \*\*\*, and \*\*\* transfers to \*\*\*.<sup>128</sup> On this basis, we find that 15.3 percent of the domestic like product sold in the merchant market in 2001 is used in the production of coated and tin mill products, the products that account for \*\*\* percent of cold-rolled steel that is internally consumed.<sup>129</sup> Given that more than 84 percent of the cold-rolled products sold in the merchant market is not used to produce coated and tin mill products, we find that the third factor of the captive production provision is met; *i.e.*, the domestic like product sold in the merchant market is not generally used in the production of the principal downstream articles produced captively, *i.e.*, coated and tin mill products.<sup>130</sup>

Because we conclude that all the elements of the captive production provision are met, we focus primarily on the merchant market for the domestic like product in determining market share and the factors affecting financial performance, although we note these factors with respect to the whole market as well.

## B. Other Conditions of Competition

We view the recent global remedy on steel announced by the President under Section 201 of the Trade Act of 1974 to be the most important condition of competition with respect to these investigations. Accordingly, we address that factor in a separate section following this discussion of other conditions of competition.

The principal known end uses of certain cold-rolled steel products are in the appliance, automotive, construction, and container industries.<sup>131</sup> Consequently, demand for certain cold-rolled steel products is largely a function of demand for the downstream products. Cold-rolled steel purchasers were divided regarding demand trends, with most indicating no change or a decrease in demand for their products over the period examined. The majority of producers and importers reported decreasing or fluctuating demand, with changes in the overall economy being the most common reason reported.<sup>132</sup>

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<sup>127</sup> Memorandum INV-Z-139 at Table III-9, and PR at Table III-9.

<sup>128</sup> See Memorandum INV-Z-139 at Table III-9, and PR at Table III-9.

<sup>129</sup> The 15.3 percent is derived by dividing domestic producers' commercial shipments to galvanizers (\*\* short tons) by domestic producers' total commercial shipments (\*\*\*), where commercial shipments to galvanizers are (1) estimated U.S. producers' commercial shipments to unrelated galvanizers (1,190,855 short tons), plus (2) \*\*\* transfers \*\*\*, and \*\*\* transfers to \*\*\*, and where total commercial shipments are (1) U.S. producers' U.S. commercial shipments to unrelated customers (12,151,578 short tons), plus (2) \*\*\* transfers to \*\*\*, and \*\*\* transfers to \*\*\* (as above), plus (3) \*\*\* transfers to \*\*\*, plus (4) other (*i.e.*, for neither galvanized products nor tin plate) (\*\* short tons).

<sup>130</sup> In Certain Hot-Rolled Steel Products From Japan, Inv. No. 731-TA-807, USITC Pub. 3202 (June 1999) at 31-35, the Commission found that the third criterion was met when between 3.7 percent and 17.7 percent of the merchant market sales were to make the downstream article; in Certain Hot-Rolled Steel Products from Argentina and South Africa, Inv. Nos. 701-TA-404 (Final) and 731-TA-898 and 905 (Final), USITC Pub. 3446 at 16, the Commission found that the third criterion was met when the share of merchant market transfers devoted to producing the downstream article was between 2.6 percent and 22.4 percent.

<sup>131</sup> CR at II-1, II-6; and PR at II-1, II-4-5.

<sup>132</sup> CR at II-6, and PR at II-4-5.

Apparent U.S. consumption in the merchant market was essentially unchanged between 1999 and 2000, decreased by 13.0 percent between 2000 and 2001, and then decreased by 0.3 percent between the first six months of 2001 and the same period in 2002.<sup>133 134</sup> Total apparent U.S. consumption, including internal transfers, decreased by 0.6 percent between 1999 to 2000, decreased by 10.2 percent between 2000 and 2001, and then increased by 7.0 percent between the first six months of 2001 and the first six months of 2002.<sup>135</sup>

The domestic industry supplied more than 81 percent of the merchant market and more than 91 percent of the total market throughout the period examined, with a merchant market low of 81.7 percent in 2001 and a merchant market high of 89.0 percent in the first six months of 2002, and with a total market low of 91.9 percent in 2001 and a total market high of 95.6 percent in the first six months of 2002.<sup>136 137</sup>

During the period examined, the U.S. cold-rolled steel industry restructured significantly. Since January 1999, Gulf States Steel ceased operations; Bethlehem, National, and Wheeling operated under Chapter 11 of the U.S. Bankruptcy Code; the operating assets of Heartland Steel and LTV were purchased by new owners (CSN and ISG, respectively); a purchase of operating assets of Acme Steel, which had ceased operations, is pending in bankruptcy court; and Cold Metal Products recently announced its intention to file for Chapter 11 bankruptcy and to close its Indianapolis and Youngstown plants.<sup>138 139</sup>

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<sup>133</sup> Views Addendum Table 1. Import data relied upon in this regard in these Views generally are based on adjusted official import statistics for all countries except Germany, India, and the Netherlands, for which foreign producers' reported exports to the United States are used, as imports from those three countries are believed to have entered under HTS statistical reporting numbers other than those considered for the adjusted official import totals used for the other countries. See CR at IV-20, and PR at IV-16.

<sup>134</sup> Views Addendum Table 1. Apparent U.S. consumption in the merchant market remained essentially unchanged from 1999 to 2000 at 18.2 million short tons; however, it declined by 13.0 percent between 2000 and 2001 to 15.8 million short tons, and declined 0.3 percent between the first six months of 2001 and the first six months of 2002, from 6.94 million short tons in the first six months of 2001 to 6.92 million short tons during that period in 2002.

<sup>135</sup> Views Addendum Table 3. Apparent U.S. consumption in the total market declined from 39.8 million short tons in 1999 to 35.6 million short tons in 2001, and increased from 16.1 million short tons in the first half of 2001 to 17.2 million short tons in the first half of 2002.

<sup>136</sup> Views Addendum Tables 1 and 3.

<sup>137</sup> Nonsubject imports supplied between 4.4 percent and 2.8 percent of the merchant market in the period, peaking in 2000, and held between 2.0 percent and 1.2 percent of the total market, peaking in 2000. Views Addendum Tables 1 and 3.

<sup>138</sup> CR at III-4, and PR at III-1, III-4. Investments, especially by AK, Nucor, Duferco, and Bethlehem, initially contributed to increased domestic capacity, which rose by 4.0 percent between 1999 and 2000. In 2001, however, the idling of LTV's Cleveland Works, which followed the sale of its East Chicago Works to US Steel (and US Steel's closure of its Fairless Hills mill), and a fire at UPI's cold-reduction mill, all contributed to lower domestic capacity, which fell by 2.4 percent in 2001 compared with 2000. CR and PR at Tables III-2 and III-4. Although domestic capacity declined further in the first quarter of 2002, by 11.2 percent compared to the first quarter of 2001, cold-rolled production resumed in May 2002 at the former LTV Cleveland Works, by International Steel Group. CR at III-4, n.10, and PR at III-4, n.10.

<sup>139</sup> We note that generally these producers produce more than cold-rolled steel and that the bankruptcies pertain to the companies as a whole, not merely to their cold-rolled operations. See, e.g., Joint Respondents' Posthearing Brief at Exhibit 6.

In June 1999, the Commission and Commerce instituted antidumping and/or countervailing duty investigations of certain cold-rolled steel products from Argentina, Brazil, China, Indonesia, Japan, Russia, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela, most of which are also subject countries in these investigations.<sup>140</sup> Between October and December 1999, the deposit of provisional antidumping and/or countervailing duties, or the posting of a bond, was required on subject imports from those countries in connection with those earlier investigations.<sup>141</sup> The provisional measures were lifted following the Commission's negative determinations between March and July of 2000.<sup>142</sup>

Antidumping duty and/or countervailing duty orders were in place with respect to certain cold-rolled steel from Germany, Korea, the Netherlands, and Sweden throughout most of the period examined. The order on Sweden, which was issued in 1985, and the orders on Germany, Korea, and the Netherlands, which were issued in 1993,<sup>143</sup> were revoked in December of 2000 (effective January 1, 2000), following the Commission's determination in its five-year review of the orders that material injury was not likely to continue or recur if the orders were revoked.<sup>144 145</sup> Accordingly, there have been no antidumping or countervailing duty orders in effect on cold-rolled steel products since the end of 2000, and the provisional measures were ended in mid-year 2000.

We also note the existence of an agreement signed on July 12, 1999, between Commerce and the Ministry of Trade of the Russian Federation. This agreement limits subject imports from Russia to approximately half the level of 1998 imports.<sup>146</sup>

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<sup>140</sup> 64 Fed. Reg. 31018 (June 9, 1999) (Commission institution); 64 Fed. Reg. 34194 (June 25, 1999) (Commerce initiation).

<sup>141</sup> USITC Pub. 3283 at I-3 - I-4. Customs was instructed by Commerce to impose these provisional measures following Commerce's affirmative preliminary determinations with respect to those countries.

<sup>142</sup> 65 Fed. Reg. 15008 (March 20, 2000) (Argentina, Brazil, Japan, Russia, South Africa, Thailand); 65 Fed. Reg. 31348 (May 17, 2000) (Turkey, Venezuela); 65 Fed. Reg. 44076 (July 17, 2000) (China, Indonesia, Slovakia, Taiwan). Any continuation of the suspension of liquidation would have been under court order, not by reason of the determinations of Commerce or the Commission. Countries subject to the current investigations but not subject to the 1999-2000 Cold-Rolled investigations are Australia, Belgium, France, Germany, India, Korea, the Netherlands, New Zealand, Spain, and Sweden.

<sup>143</sup> Certain Carbon Steel Products From Austria and Sweden, Invs. Nos. 701-TA-225, 231, USITC Pub. No. 1759 (Sep. 1985). Certain Flat-Rolled Carbon Steel Products From Argentina, Australia, Austria, Belgium, Brazil, Canada, Finland, France, Germany, Italy, Japan, Korea, Mexico, the Netherlands, New Zealand, Poland, Romania, Spain, Sweden, and the United Kingdom, Invs. Nos. 701-TA-319-332, 334, 336-42, 344, 347-353, 731-TA-573-579, 581-592, 594-597, 599-609, 612-619 (Final), USITC Pub. No. 2664 (Aug. 1993).

<sup>144</sup> Notice of Revocation, 65 Fed. Reg. 78467 (Dec. 15, 2000). Certain Carbon Steel Products From Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, the Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and The United Kingdom, Invs. Nos. AA1921-197 (Review), 701-TA-231, 319-320, 322, 325-328, 340, 342, and 348-350 (Review), and 731-TA-573-576, 578, 582-587, 604, 607-608, 612, and 614-618 (Review), USITC Pub. 3364 (Nov. 2000).

<sup>145</sup> Commissioner Miller made an affirmative determination in the five-year reviews with respect to Germany, Korea, and the Netherlands. See USITC Pub. 3364 (Nov. 2000), Separate Views of Commissioner Marcia E. Miller on Cold-Rolled Carbon Steel Flat Products.

<sup>146</sup> 65 Fed. Reg. 5500 (Feb. 4, 2000). Unlike a suspension agreement, this comprehensive agreement limits subject imports from Russia notwithstanding a negative determination by the Commission regarding subject imports from Russia.

The record demonstrates that price and non-price factors are important in purchasing decisions for cold-rolled steel. Quality was ranked first among purchasing factors by 55 responding purchasers, compared to 22 for price. Availability, traditional supplier, and delivery were ranked first among purchasing factors by 10, 10, and 3 responding purchasers, respectively.<sup>147</sup> Information from purchasers on direct comparisons between domestic and subject imported products indicates that overall the domestic and subject imported products generally are comparable in quality, but that the U.S. product is likely to be considered inferior to German and Japanese cold-rolled steel, somewhat inferior to Belgian, French, and Korean cold-rolled steel, and superior or comparable to Russian, South African, and Turkish steel.<sup>148</sup> Purchasers viewed U.S. mills as generally comparable to most foreign suppliers in terms of availability (somewhat superior to subject imports from Argentina, India, Russia, South Africa, and Turkey; somewhat inferior to subject imports from Australia, France, the Netherlands, and Sweden).<sup>149</sup> Importers reported that their average lead time, between order and delivery, was 102 days, whereas domestic producers reported an average lead time of 48 days.<sup>150</sup>

The majority of domestic production is captively consumed or transferred to related parties.<sup>151</sup> Of the remainder, approximately 63 percent of merchant market sales by U.S. producers are made directly to end users, while the remaining 37 percent are made to distributors or service centers.<sup>152</sup> In contrast, approximately 75 percent of subject imports is sold to distributors or service centers, while the remaining 25 percent is sold directly to end users.<sup>153</sup>

Approximately 55 percent of sales by U.S. producers and 52 percent of sales by importers were on a contract basis, with the remainder on a spot basis.<sup>154</sup> Contract terms are fairly similar for U.S. producers and importers. Both typically fix both price and quantity, and generally do not contain meet-or-release provisions.<sup>155</sup> The “vast majority” of purchasers reported that they change suppliers only infrequently.<sup>156</sup> While contract prices are generally “locked in” and therefore lag behind spot prices for a period, the record also indicates that spot prices do have some impact on contract prices. Spot prices impact contract prices in the cold-rolled market when new contracts are negotiated, expired contracts are renegotiated, or an executory contract contains a meet-or-release provision. There is also some evidence on this record of sellers demanding price increases or buyers demanding price concessions under executory contracts when spot prices differ significantly from contract prices.<sup>157</sup> Petitioners contend that

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<sup>147</sup> CR and PR at Table II-2; and CR at II-9, and PR at II-6.

<sup>148</sup> CR and PR at Table II-5; and CR at II-13 through II-15, and PR at II-9 through II-11. There were no comparisons for Spain and Venezuela.

<sup>149</sup> CR and PR at Table II-5; and CR at II-13 through II-15, and PR at II-9 through II-11.

<sup>150</sup> CR at II-10, and PR at II-6.

<sup>151</sup> In 1999, 61.6 percent of U.S. producers’ domestic shipments was captively consumed or transferred to related parties, 59.9 percent in 2000, and 62.8 percent in 2001. CR and PR at Table III-5.

<sup>152</sup> CR at III-15 and Table I-7; and PR at III-10 and Table I-7.

<sup>153</sup> CR and PR at Table III-7.

<sup>154</sup> CR at V-3, and PR at V-2-3.

<sup>155</sup> CR at V-3, and PR at V-2-3.

<sup>156</sup> CR at II-8, and PR at II-5.

<sup>157</sup> *E.g.*, Bethlehem, et al. Prehearing Brief at 38-44; Nucor, et al. Posthearing Brief at 17; Joint Respondents’ Posthearing Brief at Exhibits 8 and 9; Hearing Transcript at 84, 145-146.

the majority of contracts remained in place in 2002 at low prices that were negotiated in the fourth quarter of 2001.<sup>158</sup>

### **C. The Section 201 Safeguard Remedy**

In 2001, the Commission conducted a safeguard investigation of steel products (Inv. No. TA-201-73) that included the cold-rolled products subject to these investigations. On October 22, 2001, the Commission determined that carbon and alloy steel flat products, including slabs, plate, hot-rolled, cold-rolled, and coated products, were being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing articles like or directly competitive with the imported articles.<sup>159 160</sup> The Commission announced its remedy recommendations on December 7, 2001, and transmitted its recommendations to the President on December 19, 2001.<sup>161</sup>

On March 5, 2002, the President issued a Presidential Proclamation imposing safeguard duties for a period not to exceed three years and one day.<sup>162</sup> With respect to flat products, including cold-rolled steel, the President announced tariffs of 30 percent *ad valorem* in the first year, 24 percent *ad valorem* in the second year, and 18 percent *ad valorem* in the third year of the safeguard period.<sup>163</sup> The President exempted a number of countries from the safeguard measures; Argentina, India, South Africa, Thailand, Turkey, and Venezuela are subject to the current investigations but, as developing countries, are not subject to the Section 201 safeguard measures. In granting exemptions to developing countries from the safeguard measures, the President stated that the exclusionary status would be revoked for developing countries, in full or in part, if a surge in imports from exempted countries were to undermine the effectiveness of the safeguard measure. On July 18, 2002, Commerce announced proposed rules regarding a steel import licensing and surge monitoring system.<sup>164</sup>

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<sup>158</sup> Nucor, et al. Posthearing Brief at 25-28. We note that during the first half of 2002, the spot market prices for cold-rolled steel increased more rapidly (10.7 percent) than U.S. producers' open market average selling prices, which were essentially unchanged (-0.5 percent) (Memorandum INV-Z-134 at Table J-3 and Purchasing Magazine, Joint Respondents' Posthearing Brief at Exhibit 8) and that over half of domestic producers' cold-rolled sales were under contract (CR at V-3, and PR at V-2).

<sup>159</sup> See 66 Fed. Reg. 67304, December 28, 2001. See also, USITC Press Release, October 23, 2001.

<sup>160</sup> The Commission reached affirmative determinations under section 202(b) of the Trade Act of 1974 that the following products were being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or threat of serious injury, to the domestic industries producing like or directly competitive articles: (a) certain carbon flat-rolled steel, including carbon and alloy steel slabs; plate (including cut-to-length plate and clad plate); hot-rolled steel (including plate in coils); cold-rolled steel (other than grain-oriented electrical steel); and corrosion-resistant and other coated steel; (b) carbon and alloy hot-rolled bar and light shapes; (c) carbon and alloy cold-finished bar; (d) carbon and alloy rebar; (e) carbon and alloy welded tubular products (other than oil country tubular goods); (f) carbon and alloy flanges, fittings, and tool joints; (g) stainless steel bar and light shapes; and (h) stainless steel rod. The Commissioners were equally divided with respect to their determinations regarding (a) carbon and alloy tin mill products, (b) stainless steel wire, (c) tool steel, and (d) stainless steel fittings. See, Presidential Steel Products Proclamation of March 5, 2002.

<sup>161</sup> See Steel, Inv. No. TA-201-73, USITC Pub. 3479, December 2001.

<sup>162</sup> See Presidential Proclamation 7529 of March 5, 2002, 67 Fed. Reg. 10553 (March 7, 2002).

<sup>163</sup> See Annex to Proclamation 7529, 67 Fed. Reg. 10553.

<sup>164</sup> 67 Fed. Reg. 47338 (July 18, 2002). See also CR at I-7, n.14; and PR at I-6, n.14.

Certain cold-rolled products also are excluded from the President's Section 201 relief regardless of source. The product exclusions were announced on March 5, 2002, and in subsequent announcements through August 22, 2002.<sup>165</sup> The volume of cold-rolled imports accounted for by the excluded products is estimated to be 220,000 to 236,000 short tons.<sup>166</sup> In announcing the exclusions, USTR noted that approximately one-half were for the sole use of US Steel companies and the other half were for products for which there were no objections from the domestic industry and/or domestic producers could not meet the needs of the end user.<sup>167</sup>

The Section 201 investigation and the President's remedy fundamentally altered the U.S. market for many steel products, including cold-rolled steel. While we do not discount that the pendency of the cold-rolled investigations also affected subject import volumes, the record shows that the Section 201 relief was the overwhelming factor in the sharp decline in subject imports during the most recent period examined.

First, taking into account the reported average 102-day lag between import orders and their arrival in the United States,<sup>168</sup> monthly data show a correlation between the sharp decline in subject imports and key events in the Section 201 proceedings. Following the Commission's announcement of its Section 201 remedy recommendations on December 7, 2001, subject imports in March 2002 (approximately 102 days later) declined to 73,522 short tons, as compared to 161,542 short tons in March 2001 and 156,394 short tons in the preceding month of February 2002. Following the President's announcement on March 5, 2002, of the 30-percent additional tariff on cold-rolled imports, subject imports in June 2002 (approximately 102 days later) declined to 8,409 short tons, as compared to 185,523 short tons in June 2001.<sup>169</sup> Commerce announced its preliminary antidumping duty margins in this case on May 9, 2002, but by that time subject imports had already dropped to minimal levels in the U.S. market (34,012 short tons in April 2002 and 12,095 short tons in May 2002).<sup>170</sup>

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<sup>165</sup> Commerce and USTR announced product exclusions encompassing 727 products, of which approximately 160 were cold-rolled products. See 67 Fed. Reg. 10558 (Mar. 7, 2002), 67 Fed. Reg. 16484 (Apr. 5, 2002), 67 Fed. Reg. 46221 (Jul. 12, 2002); USTR's June 7, 17, 29, and July 11, 18, and August 12, 22 announcements of exclusions; see also 67 Fed. Reg. 56183 (Aug. 30, 2002) (regarding notices of June 7, 17, and 29, and July 11); Nucor, et al. Final Comments (Aug. 24, 2001) at 2.

<sup>166</sup> See Bethlehem, et al. comments on Section 201 exclusions (Aug. 26, 2002) at 2 (estimating volume of excluded subject imports, based on 2001 subject imports, at \*\*\* short tons); Japan, Brazil, and Thailand Respondents' comments on Section 201 exclusions (Aug. 26, 2002) at 3 (estimating volume of excluded subject imports, based on 2001 subject imports, at \*\*\* short tons).

<sup>167</sup> Joint Respondents' Final Comments (Aug. 26, 2002), at Ex. 1 (citing to USTR website).

<sup>168</sup> CR at II-10, and PR at II-6; see also Nucor, et al. Posthearing Brief at 7 (describing the lead time for subject imports as approximately three months).

<sup>169</sup> Monthly Commerce import statistics, compiled August 22, 2002.

<sup>170</sup> Commerce announced its preliminary countervailing duty margins on March 4, 2002. However, these margins pertained to only four subject countries, were *de minimis* for Argentina and, for the other three countries, ranged from a high of 12.58 percent for USIMINAS/COSIPA of Brazil, to 0.55 percent for POSCO of Korea. CR at I-12, and PR at I-11.

Second, hot-rolled steel and coated steel imports, which are also subject to the Section 201 tariff increase of 30 percent but not to pending antidumping and countervailing duty investigations, showed similar declines following the imposition of Section 201 relief. An examination of quarterly data shows the following:<sup>171</sup>

	January-March 2002	April-June 2002	Change
	Quantity ( <i>short tons</i> )		Percent
Cold-rolled	380,071	54,516	-85.7
Hot-rolled	379,534	159,548	-58.0
Coated	365,206	92,666	-74.6

Further, the spot prices of cold-rolled, hot-rolled and coated steel, imports of which are all subject to the 30-percent tariff, exhibited similar trends and similar dramatic increases in the wake of the Section 201 relief:<sup>172 173</sup>

	June 2000	June 2001	June 2002
	Value ( <i>per short ton</i> )		
Hot-rolled	\$325	\$240	\$340
Cold-rolled	430	340	435
Coated	440	360	445

<sup>171</sup> These data are all reported in short tons. Compiled from official Commerce statistics, these data, for cold-rolled steel, are for countries subject to these investigations, and, for hot-rolled and coated, are for countries covered by the Section 201 relief, and in the case of hot-rolled steel, the data exclude imports from Korea pursuant to an exclusion request granted to POSCO, although the exclusion was not country-specific.

<sup>172</sup> Nucor, et al. Posthearing Brief, Ex. 11 at 3. (Source: *Purchasing Magazine* Transaction Pricing Service).

<sup>173</sup> We note that an economic analysis provided by the Petitioners suggests that there is “no obvious correlation” between the extent of price change for eight steel items and whether the item is subject to a section 201 remedy. The Impact of Steel Import Relief on U.S. and World Steel Prices: A Survey of Some Counterintuitive Results by Peter Morici, Ph.D. (University of Maryland, July 2002), Exhibit 11 of Posthearing Brief of Nucor, et al., at 2. Dr. Morici examines price data for hot-rolled, cold-rolled, and galvanized sheet, as well as coiled plate; and long products such as rebar, cold-finished bar, beams, and wire rod. He observes that rebar, cold-finished bar, and coiled plate show modest price increases despite safeguard relief, unlike hot-rolled, cold-rolled, and galvanized sheet (Morici at 2). Each of these products, however, is distinct. Rebar is subject to only 15 percent duties and, as Dr. Morici notes, most of the major exporters were exempted (Morici at 8). Cold-finished bar is also distinct, given the exemptions for NAFTA suppliers (Morici at 7, noted in passing). In addition, respondents point out that available domestic capacity in the cold-finished bar industry has limited the price response to Section 201 tariffs. Joint Respondents’ Posthearing Brief at 7-8. Coiled plate, although a form of hot-rolled steel, is not part of the hot-rolled/cold-rolled/corrosion resistant integrated production process. Although coiled plate prices showed less of an increase in 2002 than other forms of flat-rolled steel, price levels in general for this steel item were less volatile. Finally, Dr. Morici notes that beam prices have increased even though beams are not subject to a safeguard action (Morici at 3). We note, however, that two of the largest foreign sources of beams, Japan and Korea, have been subject to antidumping/countervailing duty orders since the summer of 2000. Certain Structural Steel Beams from China, Germany, Luxembourg, Russia, South Africa, Spain, and Taiwan, Invs. Nos. 731-TA-935-936 and 938-942 (Final), USITC Pub. 3522 (June 2002) at 13. Thus, on balance, we find the price data for hot-rolled, cold-rolled, and galvanized sheet more probative for our analysis of the effects of the Section 201 relief than the additional steel items contained in the Morici study.

Finally, 79 of 94 purchasers responding in these investigations said that the Section 201 tariffs had reduced subject import volumes, leading, *inter alia*, to higher prices, supply shortages, and some broken or renegotiated contracts.<sup>174 175</sup>

We therefore conclude that the Section 201 relief is having a major impact in the U.S. market for cold-rolled steel and was the overwhelming factor in the sharp decline in subject imports during the most recent period examined.

## V. NO MATERIAL INJURY BY REASON OF CUMULATED SUBJECT IMPORTS

### A. In General

In the final phase of antidumping duty and countervailing duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports under investigation.<sup>176</sup> In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.<sup>177</sup> The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”<sup>178</sup> In assessing whether the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.<sup>179</sup> No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>180</sup>

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<sup>174</sup> CR at II-3, and PR at II-2-3; and Purchasers’ Questionnaire Responses. We recognize, however, that 70 out of 93 purchasers also stated that the pendency of these investigations also has affected cold-rolled prices over the period (CR at II-4, and PR at II-3) but still find that the Section 201 relief had a major impact, notwithstanding any effect from these investigations. In this regard, we note that Petitioners have stated that, among other factors, “Section 201 relief has been a significant factor in improved market conditions for the industry, . . .” Bethlehem, et al. Prehearing Brief at 50-51.

<sup>175</sup> We recognize that another sharp decline in subject import volumes occurred between December 2001 (when subject import volumes were the highest of any month of the entire period examined) and January 2002, following both the filing of the petitions and the Commission’s affirmative injury vote in the Section 201 investigation on October 22, 2001. As noted above, we do not discount the pendency of these investigations, and find that both the pending investigations and the Section 201 investigation had an impact on subject import volumes. Nonetheless, subject imports declined even more dramatically to their lowest levels of the period examined in June 2002, following the Commission’s Section 201 remedy recommendations and the President’s announcement of the actual remedy. The record therefore shows that the Section 201 relief fundamentally altered the U.S. market for cold-rolled steel and was the most significant factor in the decline of subject imports during the most recent period examined.

<sup>176</sup> 19 U.S.C. §§ 1671d(b) and 1673d(b).

<sup>177</sup> 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each [such] factor . . . [a]nd explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B). See also Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

<sup>178</sup> 19 U.S.C. § 1677(7)(A).

<sup>179</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>180</sup> 19 U.S.C. § 1677(7)(C)(iii).

Further, the Commission is given discretion by the statute to look to the time period that provides probative, reliable data “in as contemporaneous a time frame as possible.”<sup>181</sup> <sup>182</sup> The statute allows the Commission to reduce the weight accorded to data for the period after the filing of the petition upon considering whether any change in the volume, price effects, or impact of imports since the filing of the petition is related to the pendency of the investigation.<sup>183</sup> The presumption that such change is related to the pendency of the investigation is rebuttable.<sup>184</sup>

We have collected data in these investigations through June 2002.<sup>185</sup> We find, as discussed above, strong evidence on the record that the Section 201 relief was a major factor in the sharp decline in subject imports, notwithstanding any effects attributable to the pendency of the petition, and do not find persuasive Petitioners’ analysis that purported to isolate the effects on the cold-rolled market of the current investigation and the Section 201 relief.<sup>186</sup> We therefore reject Petitioners’ arguments to accord less weight to subject import declines and domestic market improvements that occurred in 2002.<sup>187</sup>

For the reasons discussed below, we determine that the domestic certain cold-rolled steel industry is not materially injured by reason of the cumulated subject imports.

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<sup>181</sup> See Saarstahl, AG v. United States, 858 F. Supp. 196, 200-201 (Ct. Int’l Trade 1994), discussing CHR. Bjelland Seafoods v. United States, 16 CIT 945, 956 (1992).

<sup>182</sup> Petitioners and Respondents both cite recent remands by the Court of International Trade in Altx, Inc. v. United States to support their respective views regarding the appropriate period of time upon which the Commission should focus. Posthearing Brief of Nucor, et al. at 5-6, Australian and New Zealand Posthearing Brief, Annex 1 at 1-2. These investigations, however, differ from Certain Seamless Stainless Steel Hollow Products from Japan in that a watershed event, namely the Section 201 action on flat-rolled steel, clearly altered the conditions of competition in the U.S. market. Therefore, our analysis of the record includes the entire period for which data were collected, but distinguishes between events that occurred prior to the Section 201 action and events that occurred afterward.

<sup>183</sup> 19 U.S.C. § 1677(7)(I).

<sup>184</sup> SAA at 854.

<sup>185</sup> The Commission went to great lengths to collect the most recent data possible for use in its deliberations and determinations, including data through June 2002. Moreover, in response to arguments of parties at the hearing on July 18, 2002, a supplemental questionnaire was sent to U.S. producers on July 24, 2002, requesting second-quarter trade and financial data for 2001 and 2002. Responses were requested by August 2, 2002. In consideration that most supplemental (half-year and second-quarter) data were received by the Commission and parties after the due date for posthearing briefs (July 25, 2002), the Commission granted parties an additional opportunity to file comments addressing data for the periods January-June 2002 and/or April-June 2002. On August 22, 2002, following the August 22, 2002, announcement by the Department of Commerce and the Office of the U.S. Trade Representative concerning the seventh and final list of Section 201 safeguard exclusions, the Commission re-opened the record to incorporate this new information and granted parties an additional opportunity to comment on the Section 201 safeguard exclusion announcements that occurred subsequent to the filing of their posthearing briefs.

<sup>186</sup> See Nucor, et al. Prehearing Brief at 13-16, Exhibit 2. We discuss this analysis in the portion of our views entitled “Price Effects of the Subject Imports.”

<sup>187</sup> See, e.g., Nucor, et al. Prehearing Brief at 13-16 and Exhibit 2; Bethlehem, et al. Prehearing Brief at 49-52; Nucor, et al. Posthearing Brief at 4-8; Bethlehem, et al. Posthearing Brief, Answers to Chairman Okun's Questions, at A-15-A-19; and hearing transcript at 158-159.

## B. Volume of the Cumulated Subject Imports

Section 771(7)(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”<sup>188</sup>

In evaluating the significance of subject import volume, we have considered the volume and market penetration of subject imports throughout the period examined. As discussed below, the absolute volume of subject imports decreased slightly from 1999 to 2001, although subject imports gained market share over the same period. This was followed, however, by a sharp decline in both the volume and market penetration of subject imports in the first half of 2002, compared with the first half of 2001.

The quantity of cumulated subject imports decreased from 2.48 million short tons in 1999 to 1.68 million short tons in 2000, then increased to 2.40 million short tons in 2001, slightly below the 1999 level. The share of apparent U.S. consumption accounted for by the cumulated subject imports in the merchant market similarly declined from 13.6 percent in 1999 to 9.2 percent in 2000, then increased to 15.2 percent in 2001 as apparent U.S. consumption declined.<sup>189</sup> In the total market, including captive consumption, subject imports’ market share decreased from 6.2 percent in 1999 to 4.2 percent in 2000, then increased to 6.7 percent in 2001.<sup>190</sup> As a ratio to U.S. production, the volume of subject imports on a cumulative basis was 6.6 percent in 1999, 4.5 percent in 2000, and 7.3 percent in 2001.<sup>191</sup>

As discussed above, we find that the imposition of 30 percent tariffs pursuant to Section 201 was the overwhelming factor in the decline in subject import volume in 2002, notwithstanding the pendency of these investigations.

Specifically, the volume of cumulated subject imports declined significantly in the first half of 2002 to 460,875 short tons, compared with a volume of 1.04 million short tons in the first half of 2001.<sup>192</sup> The share of the merchant market accounted for by the subject imports similarly dropped to 6.7 percent in the first half of 2002, compared with a share of 15.0 percent in the first half of 2001.<sup>193</sup> The cumulated subject imports accounted for a 2.6 percent share of the total market, including captive consumption, in the first half of 2002, compared with a 6.2 percent share in the first half of 2001.<sup>194</sup> We note that the decline in subject imports accelerated in the second quarter of 2002. After declining to 373,566 short tons in the first quarter of 2002, compared with 467,909 short tons in the first quarter of 2001, the

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<sup>188</sup> 19 U.S.C. § 1677(7)(C)(i).

<sup>189</sup> Views Addendum Table 1.

<sup>190</sup> CR and PR at Table IV-8C. The decrease in volume and market share in 2000 followed Commerce’s imposition of preliminary duties in the 1999-2000 cold-rolled steel investigations, and the increase in volume and market share in 2001 followed the lifting of those preliminary duties and the lifting of final orders on cold-rolled imports from many of the subject countries beginning in March 2000. We note that a substantial portion of the increase in imports from Korea in 2001 were of full-hard steel imported by UPI due to the fire at its mill. UPI purchased \*\*\* short tons of cold-rolled steel from Korea in 2001 and \*\*\* short tons in the first quarter of 2002. CR and PR at Table III-11; and CR at III-25, and PR III-17.

<sup>191</sup> Compare Views Addendum Table 1 with Memorandum INV-Z-134 at Table J-1, and PR at Table J-1.

<sup>192</sup> Views Addendum Table 1.

<sup>193</sup> Views Addendum Table 1.

<sup>194</sup> Memorandum INV-Z-134 at Table J-1, and PR at Table J-1.

quantity of cumulated subject imports dropped to a mere 54,514 short tons in the second quarter of 2002, compared with 556,010 short tons in the second quarter of 2001.<sup>195</sup>

The cumulated subject imports accounted for 1.7 percent of the open market in the second quarter of 2002, as compared to 16.9 percent in the second quarter of 2001. The cumulated subject imports accounted for a 0.6 percent share of the total market, including captive consumption, in the second quarter of 2002, compared with a 7.0 percent share in the second quarter of 2001.<sup>196 197</sup> In the first half of 2002, the volume of such imports was equivalent to 2.7 percent of U.S. production, compared to 7.0 percent in the first half of 2001.<sup>198</sup>

Accordingly, while we recognize the higher subject import volumes earlier in the period, we find that the present volume of subject imports is not significant, in absolute terms or relative to domestic consumption or production.

### **C. Price Effects of the Cumulated Subject Imports**

Section 771(7)(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether –

- (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and
- (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.<sup>199</sup>

The majority of domestic producers' and importers' sales (55 and 52 percent, respectively) are made by contracts. While contracts typically fix both price and quantity, there is evidence of flexibility during the term of a contract when spot prices differ significantly from contract prices.<sup>200</sup> A significant portion of the subject imports compete with the domestic like product in certain important portions of the merchant market, such as for sales to domestic distributors.<sup>201</sup> Most U.S. purchasers reported that U.S.-produced cold-rolled steel and subject imports are used in the same applications, although there were

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<sup>195</sup> Memorandum INV-Z-134 at Table J-1, and PR at Table J-1.

<sup>196</sup> Memorandum INV-Z-134 at Tables J-1 and J-2, and PR at Tables J-1 and J-2.

<sup>197</sup> The most recent monthly data for cumulated subject imports in June 2002 was 8,407 short tons compared with June 2001 imports of 180,793 short tons.

<sup>198</sup> Compare Views Addendum Table 1 with Memorandum INV-Z-134 at Table J-1, and PR at Table J-1.

<sup>199</sup> 19 U.S.C. § 1677(7)(C)(ii).

<sup>200</sup> Bethlehem, et al. Prehearing Brief at 38-44; Nucor, et al. Posthearing Brief at 17; Joint Respondents' Posthearing Brief at Exhibits 8 and 9; Hearing Transcript at 84, 145-146.

<sup>201</sup> CR and PR at Table III-7; and CR at III-14, and PR at III-9. Reported U.S. shipments of imports were equivalent to 29.2 percent of U.S. producers' commercial shipments to distributors, and 16.8 percent of commercial shipments to container manufacturers (though only three subject countries are really active in the latter category). However, reported U.S. shipments of imports were equivalent to only 8.9 percent and 5.7 percent, respectively, of U.S. producers' commercial shipments to galvanizers and to "other" end users. Furthermore, reported U.S. shipments of imports were equivalent to only 3.0 percent and 0.3 percent, respectively, of U.S. producers' commercial shipments to automotive and appliance end users. Id.

exceptions for several countries.<sup>202</sup> As noted above, quality, price, and supply considerations are important factors in purchasing decisions.<sup>203</sup> A substantial majority of purchasers identified U.S. mills as price leaders in the U.S. market.<sup>204</sup>

The Commission collected pricing data on two products sold to distributors and to end users.<sup>205</sup> Of the 455 possible quarterly price comparisons between U.S.-produced cold-rolled steel and subject imports, subject imports undersold domestic products in 296 quarters and oversold domestic products in 159 quarters.<sup>206</sup> While the data show more instances of underselling than overselling, most of the underselling occurred earlier in the period examined, prior to the imposition of Section 201 relief.<sup>207</sup>

The questionnaire pricing data show prices declining through 2001, after increasing in the first half of 2000, as the market share of subject imports in the U.S. market increased markedly from the lower levels in 2000.<sup>208</sup> <sup>209</sup> However, in 2002, with the imposition of Section 201 relief, prices began to

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<sup>202</sup> CR and PR at Table II-3.

<sup>203</sup> Quality was ranked first among purchasing factors by 55 responding purchasers, compared to 22 for price. Availability, traditional supply channels, and delivery, all supply considerations, also were ranked first among purchasing factors by 23 responding purchasers. CR and PR at Table II-2. Information from purchasers on direct comparisons between domestic and subject imported products indicates that overall the domestic and subject imported products generally are comparable in quality, but that U.S. product is likely to be considered inferior to German and Japanese cold-rolled steel, somewhat inferior to Belgian, French, and Korean cold-rolled steel, and superior to Russian, South African, and Turkish steel. CR and PR at Table II-5 (there were no comparisons for Spain and Venezuela). In terms of delivery time, the domestic industry had a clear advantage over the subject imports, based on purchaser characterizations as well as questionnaire data indicating that import lead times (102 days) were more than twice those of domestic lead times (48 days). CR and PR at Table II-5; and CR at II-13 through II-15 (purchaser views), and PR at II-9 through II-11; CR at II-10 (lead times), and PR at II-6. Purchasers viewed U.S. mills as generally comparable to most foreign suppliers in terms of availability: somewhat superior to subject imports from Argentina, India, Russia, and South Africa; somewhat inferior to subject imports from Australia, France, the Netherlands, and Sweden. CR and PR at Table II-5; and CR at II-13 through II-15, and PR at II-9 through II-11.

<sup>204</sup> The number of purchasers reporting price leadership by domestic firms were 34 for US Steel; 20 for Nucor; 15 for AK Steel; 9 for LTV; 8 for CSI; 7 for UPI; 6 for Bethlehem; and 1-2 for nine smaller domestic mills. Price leadership by U.S. mills in general was reported by 2 firms and by minimills in general by 1 purchaser. In contrast, two firms reported subject import price leadership by Korea or a Korean firm, and one each reported price leadership by Brazil, a Chinese firm, a New Zealand firm, and a Japanese firm (reported by 1 purchaser each). Questionnaire responses of U.S. purchasers.

<sup>205</sup> CR and PR at Tables V-1 and V-2. Information on a third product was requested but the information obtained did not permit price comparisons for any subject country. CR at V-5, and PR at V-6.

<sup>206</sup> CR at V-5, and PR at V-6. No comparable pricing data were reported for Spain.

<sup>207</sup> For both products 1 and 2 underselling margins were greater in 1999 than in 2002. CR and PR at Tables V-3 and V-4; and CR at V-10, V-13, and PR at V-9, V-12. E.g., the average margin of underselling was 9.1 percent in 1999 compared with overselling of 4.0 percent in 2002; average underselling for sales to end users was 24.8 percent in 1999 compared with 1.5 percent in 2002. See CR at V-10, V-13, and PR at V-9, V-12.

<sup>208</sup> Reported U.S. prices for product 1 sold to service centers and end users declined 17.7 percent and 25.6 percent, respectively, during 1999-2001 while prices for product 2 declined 22.9 percent and 21.7 percent during the same period. CR and PR at App. H.

<sup>209</sup> Petitioners, based on an econometric analysis, assert that subject imports are the most important factor in the decline in domestic cold-rolled prices during the period examined. Nucor, et al. Posthearing Brief at Exhibit 3. While the Petitioners' updated analysis includes data through April 2002, it does not specifically measure the effect  
(continued...)

recover.<sup>210</sup> Reportedly, spot prices for cold-rolled steel jumped dramatically to \$435 per ton in June 2002, as compared to \$340 per ton in June 2001, and were even higher, at \$525 per ton, in July 2002.<sup>211</sup> The pricing data collected by the Commission also show rising prices in the first half of 2002, although not to the highest levels of the period examined.<sup>212</sup> We attribute this to the fact that, although some contracts have been renegotiated as a result of the sharp increase in spot prices, many contracts continue to be honored at the price levels negotiated at the end of 2001 when prevailing market prices were significantly lower.<sup>213 214</sup>

More than half of affected purchasers have reported supply problems (more than one-quarter have been placed on allocation) since March 2002, and 80 of 91 purchasers responding have received notices of price increases since that time.<sup>215</sup> We note that the closure of LTV's production facilities in December 2001 temporarily reduced the available supply of domestically produced cold-rolled steel. LTV had commercial shipments in 2001 of \*\*\* short tons.<sup>216</sup> The record in these investigations suggests that this disruption in domestic supply temporarily contributed to rising U.S. prices, in conjunction with the withdrawal of subject imports from the market following the Section 201 action.<sup>217</sup> In April 2002, however, ISG purchased the steelmaking assets of the former LTV, and began production of cold-rolled

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<sup>209</sup> (...continued)

of the pendency of these investigations and the Section 201 remedy. Consequently, we do not find this analysis probative in assessing present material injury given the overwhelming impact of the Section 201 remedy on U.S. market conditions and the sharp decline in subject imports during 2002.

<sup>210</sup> Petitioners indicate that observed increases in the prices of subject imports were due to the filing of the petitions and not to the threat and application of the Section 201 tariffs. They contend that the price of imported cold-finished bar increased by much less than the price of cold-rolled sheet despite also being subject to a similar Section 201 tariff and that a comparison to a similar increase in the price of hot-rolled steel imports is not appropriate as it also is impacted by the filing of the petition on cold-rolled steel. (The Differential Impact of Title VII and Section 201 on the Cold-Rolled Industry, Dr. Seth Kaplan and Dr. David A. Riker (Charles Rivers Associates, Washington, DC) in Prehearing Brief of Nucor, et al. at Exhibit 2, at 1-3). However, Respondents point out that available domestic capacity in the cold-finished bar industry has limited the price response to the Section 201 tariffs while the limited capacity of domestic cold-rolled producers has caused prices in this market to respond more to the Section 201 tariffs. Respondents' Joint Posthearing Brief at 7-8. Petitioners also argue that inclusion in the current investigations essentially "determined" whether imports of cold-rolled steel decreased or increased between September 2001 and April 2002. Prehearing Brief of Nucor, et al. at Exhibit 2, at 5 and 9. We do not find this analysis convincing, however, given the substantial volume of nonsubject imports accounted for by NAFTA partners Canada and Mexico (not subject to these investigations but also exempted from the Section 201 tariff). Finally, we place little weight on the comparison of subject and nonsubject import volumes for countries covered by the safeguard action, in light of the very small volume of nonsubject imports. With respect to the comparison of subject and nonsubject imports not covered by the safeguard action, we note that none of the subject countries was aware that it was not covered by the Section 201 tariff until President Bush's announcement on March 5, 2002. (Prehearing Brief of Nucor, et al., Exhibit 2, at 9).

<sup>211</sup> Respondents' Joint Final Comments of August 23, 2002 at 7.

<sup>212</sup> CR and PR at Tables H-1 and H-2. The price of U.S. product 1 sold to service centers and end users rose 7.2 percent and 2.7 percent, respectively, between the fourth quarter of 2001 and the second quarter of 2002. The price of U.S. product 2 sold to service centers and end users rose 15.1 percent and 9.8 percent, respectively, between the fourth quarter of 2001 and the second quarter of 2002. CR and PR at Tables H-3 and H-4.

<sup>213</sup> Hearing Transcript at 64, 79-80, 115.

<sup>214</sup> New contract negotiations will take place in the fall of 2002. Hearing Transcript at 147.

<sup>215</sup> CR at II-3 through II-4, PR at II-2.

<sup>216</sup> CR and PR at Table III-6.

<sup>217</sup> See, e.g., CR and PR at Table II-8.

steel in May 2002.<sup>218</sup> Subject imports, in contrast, as prices continued to rise, declined substantially throughout the second quarter of 2002, and presently are far below their levels of 1999-2001 as a result of the Section 201 action.

Finally, we note that the domestic producers made no lost sales or lost revenue allegations in the preliminary phase of these investigations and that only one of the limited lost revenue allegations made by domestic producers in these final phase investigations was confirmed.<sup>219</sup>

Based on the foregoing, although subject imports which entered the market earlier in the period examined continue to have an effect on the industry's contract prices negotiated before the Section 201 relief was effective, subject imports currently entering the market are not suppressing current domestic prices to a significant degree. Thus, we find that subject imports are not adversely affecting domestic prices to a significant degree based on the current volume of subject imports and the increase in domestic prices in 2002.

#### **D. Impact of the Cumulated Subject Imports on the Domestic Industry**

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.<sup>220</sup> These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."<sup>221 222</sup>

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<sup>218</sup> CR at III-4, n.10, PR at III-4, n.10.

<sup>219</sup> CR at V-14 and Memorandum INV-Z-134 at V-18, and PR at V-6.

<sup>220</sup> 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851 and 885 ("In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." Id. at 885.).

<sup>221</sup> 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851, 885; Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386 and 731-TA-812-813 (Preliminary), USITC Pub. 3155 (Feb. 1999) at 25, n.148.

<sup>222</sup> The statute instructs the Commission to consider the "magnitude of the dumping margin" in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). The margins in Commerce's final determinations are as follows:

<i>India:</i>	153.56 percent for Ispat Industries and all others. 67 Fed. Reg. 47518 (July 19, 2002).
<i>Japan:</i>	115.22 percent for Kawasaki Steel and Nippon Steel, 112.56 percent for all others. 67 Fed. Reg. 47520 (July 19, 2002).
<i>Sweden:</i>	40.54 percent for SSAB Svenskt Stal, AB Sandvik Steel, and all others. 67 Fed. Reg. 47522 (July 19, 2002).
<i>Thailand:</i>	142.78 percent for Thai Cold-Rolled Steel Sheet, and 127.44 percent for all others. 67 Fed. Reg. 47521 (July 19, 2002).

From 2000 to 2001, the U.S. industry incurred heavy financial losses, which are likely attributable to declining sales values and a steep drop in prices during a period when demand declined dramatically and low-priced subject imports gained U.S. market share.<sup>223</sup> However, in 2002, with the imposition of Section 201 relief and the resulting dramatic decline in subject imports, the industry's condition began to improve as prices rose and shipments increased.<sup>224</sup> Section 201 relief was imposed to remedy serious injury to the industry caused by imports of flat-rolled steel products, including cold-rolled steel, during the period examined, and after the relief was imposed, the record shows its positive effects. Subject imports have declined to levels too small to have a material adverse effect on the domestic industry. A detailed discussion of the evolving condition of the domestic industry over the period, particularly following the imposition of Section 201 relief, follows.

Apparent U.S. consumption of certain cold-rolled steel products in the merchant market declined from 18.2 million short tons in both 1999 and 2000 to 15.8 million short tons in 2001, then declined slightly in the first half of 2002 to 6.92 million short tons, compared with consumption of 6.94 million short tons in the first half of 2001.<sup>225</sup> Apparent U.S. consumption in the total market, including captive consumption, declined slightly from 39.8 million short tons in 1999 to 39.6 million short tons in 2000, then declined to 35.6 million short tons in 2001. In the first half of 2002, apparent U.S. consumption increased to 17.2 million short tons, compared with 16 million short tons in the first half of 2001.<sup>226</sup>

Domestic producers' share of the quantity of apparent U.S. consumption in the merchant market increased from 82.9 percent in 1999 to 85.9 percent in 2000, and then declined to 81.7 percent in 2001.<sup>227</sup> In the first half of 2002, however, domestic producers' share of the merchant market increased substantially to 89.0 percent, compared with a share of 81.2 percent in the first half of 2001.<sup>228</sup> The domestic producers' share of the merchant market in the second quarter of 2002, following the President's announcement of the Section 201 remedy, was 92.5 percent, compared with a 79.4 percent share in the second quarter of 2001.<sup>229</sup> Domestic producers' share of the quantity of apparent U.S. consumption in the total market, including captive consumption, increased from 92.2 percent in 1999 to

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<sup>223</sup> A group of petitioners argued that a "natural experiment" which occurred during the period examined demonstrates that unfairly traded imports caused prices to decline and the financial performance of the domestic industry to deteriorate. The "natural experiment," according to Petitioners, was the previous antidumping/countervailing duty case on cold-rolled imports, filed in late June 1999, and the subsequent drop in imports and improvement in domestic producer prices and financial performance from late 1999 to early 2000, followed by a return of imports, and a decline in prices and in domestic industry profitability after the Commission's negative injury determination in that case in the spring of 2000. Nucor, et al. Prehearing Brief at 1, 17-20. We have considered how market conditions, including the previous and pending Title VII cases and the more recent Section 201 relief, affected trends in import volumes and prices, and industry performance throughout the entire period examined. However, with respect to Petitioner's "natural experiment" theory, we would expect any pending Title VII case to inject some uncertainty into the market. The fluctuations and uncertainty that occur in the market during such a period do not in and of themselves prove that, prior to the filing of a case, imports are causing material injury.

<sup>224</sup> The Petitioners, as noted previously, stated that the Section 201 relief has been a "significant factor" in improved market conditions for the industry. Bethlehem, et al. Prehearing Brief at 50-51.

<sup>225</sup> Views Addendum Table 1.

<sup>226</sup> Memorandum INV-Z-134 at Table J-1.

<sup>227</sup> Views Addendum Table 1.

<sup>228</sup> Views Addendum Table 1.

<sup>229</sup> Memorandum INV-Z-134 at Table J-2.

93.6 percent in 2000, and then declined to 91.9 percent in 2001.<sup>230</sup> In the first half of 2002, however, domestic producers' share of the total market increased substantially to 95.6 percent, compared with a share of 91.9 percent in the first half of 2001.<sup>231</sup> The domestic producers' share of the total market in the second quarter of 2002, following the President's announcement of the Section 201 remedy, was 97.2 percent, compared with a 91.6 percent share in the second quarter of 2001.<sup>232</sup>

The industry's production capacity increased from 43.6 million short tons in 1999 to 45.2 million short tons in 2000, then declined to 44.1 million short tons in 2001, slightly above the 1999 capacity level.<sup>233</sup> In the first six months of 2002, capacity declined by 3.7 percent, nearly all of that decline occurring in the first quarter of 2002.<sup>234</sup> At the same time, domestic production, which had declined from 37.4 million short tons in 1999 to 33.1 million short tons in 2001, increased in the first half of 2002 to 16.8 million short tons, compared with production of 14.8 million short tons in the first half of 2001.<sup>235</sup> All of the production increase occurred in the second quarter of 2002.<sup>236</sup> Concomitantly, capacity utilization increased to a period high of 89.9 percent in the second quarter of 2002, compared with a rate of 73.5 percent in the second quarter of 2001. This followed capacity utilization rates of 85.8 percent in 1999, 83.1 percent in 2000, 75.1 percent in 2001, and 80.2 percent in the first quarter of 2002, compared with a first quarter 2001 utilization rate of 73.1 percent.<sup>237</sup>

Similar trends are noted with respect to various other performance and financial indicators for the domestic industry. As a result of declining sales volume, low capacity utilization, and lower prices in 2001, the industry's operating losses grew from a loss of \$153 million in 1999 to a loss of over \$2 billion in 2001, then declined to a loss of \$688 million in the first half of 2002, compared with a loss of \$926 million in the first half of 2001. In the second quarter of 2002, the industry's operating loss declined to \$204 million, compared with a loss of \$447 million in the second quarter of 2001.<sup>238</sup> The industry's operating loss as a percent of net sales similarly declined in the second quarter of 2002 to 6.1 percent compared to 16.4 percent in the second quarter of 2001.<sup>239</sup>

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<sup>230</sup> Views Addendum Table 3.

<sup>231</sup> Views Addendum Table 3.

<sup>232</sup> Memorandum INV-Z-134 at Table J-1.

<sup>233</sup> CR and PR at Table C-1.

<sup>234</sup> Memorandum INV-Z-134 at Table J-1.

<sup>235</sup> CR and PR at Table C-1; and Memorandum INV-Z-134 at Table J-1, and PR at Table J-1.

<sup>236</sup> Memorandum INV-Z-134 at Table J-1, and PR at Table J-1.

<sup>237</sup> CR and PR at Table C-1; and Memorandum INV-Z-134 at Table J-1, and PR at Table J-1.

<sup>238</sup> CR and PR at Table C-1; and Memorandum INV-Z-134 at Table J-1, and PR at Table J-1.

<sup>239</sup> Memorandum INV-Z-134 at Table J-1, and PR at Table J-1. For the total market, the industry's operating loss as a percent of net sales was 1.2 percent in 1999, 1.7 percent in 2000, and 18.8 percent in 2001. It was 16.7 percent in the first quarter of 2002, compared with 16.5 percent in the first quarter of 2001. Operating loss as a percent of net sales for the first half of 2002 was 11.1 percent, compared with 16.8 percent in the first half of 2001.

The number of production and related workers and wages paid each increased from 1999 to 2000, but declined from 2000 to 2001.<sup>240</sup> In the first half of 2002, compared with the first half of 2001, the number of production and related workers and hours worked declined, while wages paid increased. Hourly wages and productivity also increased each year during the period examined, including in the first half of 2002.<sup>241</sup>

Industry capital expenditures reported in the questionnaires declined from 1999 to 2000, then increased in 2001, albeit to a level below the 1999 level, then increased in the first six months of 2002 compared with the first six months of 2001.<sup>242</sup>

As indicated above, following the imposition of Section 201 relief, subject import volumes declined to minimal levels, and therefore we do not find the current volume of subject imports to be significant. Nor do we find that subject imports currently in the market are having significant adverse price effects, given their minimal presence in the U.S. market. Accordingly, we do not find that the present condition of the domestic industry is attributable in any material respect to the current subject imports, and we therefore do not find that any material injury currently being experienced by the domestic industry is by reason of the subject imports.<sup>243</sup>

## **VI. NO THREAT OF MATERIAL INJURY BY REASON OF CUMULATED SUBJECT IMPORTS**

Section 771(7)(F) of the Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted.”<sup>244</sup> The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a whole” in making its determination whether dumped or subsidized imports are imminent and whether

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<sup>240</sup> The number of production and related workers increased from 29,983 in 1999 to 30,469 in 2000 and then declined to 28,071 in 2001. Hours worked decreased from 68.3 million in 1999 to 67.6 million in 2000, and declined to 59.2 million in 2001. Wages paid increased only slightly from \$1.825 billion in 1999 to \$1.828 billion in 2000, and then declined to \$1.620 billion in 2001. Productivity, as measured by short tons per thousand hours, increased from 546.6 in 1999 to 554.5 in 2000, and then increased to 558.2 in 2001. CR and PR at Table III-14.

<sup>241</sup> Hourly wages increased from \$26.74 in 1999 to \$27.03 in 2000 and then to \$27.38 in 2001. CR and PR at Table III-5.

<sup>242</sup> CR and PR at Table C-1; and Memorandum INV-Z-134 at Table J-1, and PR at Table J-1.

<sup>243</sup> Vice Chairman Hillman and Commissioner Miller find that, on the facts of this case, any remaining injury to the industry that may have been attributable to the subject imports is the lingering effect of past injury. In light of the President’s decision to impose Section 201 tariffs on the bulk of imports subject to these investigations, basing a present material injury determination on the lingering effects of that injury would be inconsistent with the remedial purpose of the antidumping and countervailing duty statute. See Gerald Metals Inc. v. United States, 132 F.3d 716, 723 (Fed. Cir. 1997); Chaparral Steel Co. v. United States, 901 F.2d 1097, 1103-04 (Fed. Cir. 1990); CHR Bjelland Seafoods v. United States, 16 CIT 945, 956 (1992).

<sup>244</sup> 19 U.S.C. § 1677(7)(F)(ii).

material injury by reason of imports would occur unless an order is issued.<sup>245</sup> In making our determination, we considered all statutory factors that are relevant to these investigations.<sup>246 247</sup>

### A. Cumulation for Purposes of Threat

Cumulation for threat is treated in section 771(7)(H) of the Act.<sup>248</sup> This provision permits the Commission, to the extent practicable, to assess cumulatively the volume and effect of imports for purposes of conducting its threat analysis.<sup>249</sup> The limitations concerning what imports are eligible for cumulation and the exceptions to cumulation are applicable to cumulation for threat as well as to cumulation for present material injury. In addition, the Commission also considers whether the imports are increasing at similar rates in the same markets, whether the imports have similar margins of underselling, and the probability that imports will enter the United States at prices that would have a depressing or suppressing effect on domestic prices of that merchandise.<sup>250</sup> In addition, likely different conditions of competition among the subject imports also may be relevant to this issue.<sup>251</sup>

For the reasons stated in our determination on cumulation for purposes of our current material injury analysis, we do not cumulate subject imports from Australia with those from other subject countries for purposes of our threat analysis. We exercise our discretion to cumulate imports from the remaining nineteen countries in two separate groups: imports from those countries that are subject to the Section 201 remedy and imports from the developing countries that are excluded. We find application of the Section 201 remedy to be a highly significant condition of competition that is likely to influence pricing and volume trends among subject countries and therefore provides a meaningful basis for distinguishing between the two subject import groups. Accordingly, we cumulate the thirteen subject countries that are covered by the Section 201 remedy, namely, Belgium, Brazil, China, France, Germany,

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<sup>245</sup> 19 U.S.C. § 1677(7)(F)(ii).

<sup>246</sup> 19 U.S.C. § 1677(7)(F)(i). Statutory threat factor (VII) is inapplicable because these investigations do not involve imports of both raw and processed agricultural products.

Factor I requires the Commission to consider information presented by Commerce regarding the nature of a countervailable subsidy and whether the subsidy is one described in Article 3 or 6.1 of the Subsidies Agreement. 19 U.S.C. § 1677(7)(F)(i)(I). Argentina, Brazil, France and Korea are subject to countervailing duty investigations. Commerce has not yet issued final determinations with respect to those four countries. In its preliminary determinations, Commerce described the nature of the subsidies but did not expressly identify any subsidy programs as ones described in Articles 3 or 6.1 of the Subsidy Agreement. See 67 Fed. Reg. 9670 (Mar. 4, 2002) (Argentina); 67 Fed. Reg. 9652 (Brazil); 67 Fed. Reg. 9662 (Mar. 4, 2002) (France); 67 Fed. Reg. 9685 (Mar. 4, 2002) (Korea). Certain of the subsidies preliminarily found to be countervailable appear to be ones described in Section 3 or 6.1 of the Subsidies Agreement. Id.

<sup>247</sup> The foreign producer data in these investigations generally covered the vast majority of subject production of cold-rolled steel, with the exception of India, Russia, and Sweden. Regarding Russia, we note that reported data does cover the \*\*\* of subject imports from Russia during the period examined. CR and PR at Tables VII-1 and VII-16, n.l.

<sup>248</sup> 19 U.S.C. § 1677(7)(H).

<sup>249</sup> See Kern-Liebers v. United States, 19 CIT 87, 103-04 (1995).

<sup>250</sup> See Torrington Co. v. United States, 790 F. Supp. at 1172 (affirming Commission's determination not to cumulate for purposes of threat analysis when pricing and volume trends among subject countries were not uniform and import penetration was extremely low for most of the subject countries); Metallwerken Nederland B.V. v. United States, 728 F. Supp. 730, 741-42 (Ct. Int'l Trade 1989); Asociacion Colombiana de Exportadores de Flores v. United States, 704 F. Supp. 1068, 1072 (Ct. Int'l Trade 1988).

<sup>251</sup> See Certain Structural Steel Beams from Japan, Inv. No. 731-TA-853 (Final), USITC Pub. 3308 (June 2000).

Japan, Korea, the Netherlands, New Zealand, Russia, Spain, Sweden, and Taiwan. We separately cumulate subject imports from Argentina, India, South Africa, Thailand, Turkey, and Venezuela, the six countries that are not subject to the Section 201 remedy.

**B. Statutory Threat Factors: Thirteen Subject Countries Subject To Section 201 Remedy**

The record indicates a significant decline in the volume and market penetration of cumulated subject imports from Belgium, Brazil, China, France, Germany, Japan, Korea, the Netherlands, New Zealand, Russia, Spain, Sweden, and Taiwan in the first half of 2002, following the Commission's remedy recommendations and the President's announcement of actual remedies under Section 201. As discussed above with respect to the cumulated subject imports from nineteen countries, although subject imports declined after the filing of the petition in these investigations, we find that Section 201 relief was a major factor in the sharp decline in subject imports.

These cumulated subject imports declined from a volume of \*\*\* short tons in 1999 to \*\*\* short tons in 2000, then increased to \*\*\* short tons in 2001. Then, in the first half of 2002, these subject imports declined dramatically to \*\*\* short tons, compared with \*\*\* short tons in the first half of 2001.<sup>252</sup>

As a share of the merchant market, these imports increased from \*\*\* percent in 1999 to \*\*\* percent in 2001 but held only \*\*\* percent of the merchant market in the first half of 2002, compared with a share of \*\*\* percent in the first half of 2001.<sup>253</sup> In the second quarter of 2002 alone, the share held by these cumulated subject imports in the merchant sector was only \*\*\* percent, compared with a \*\*\* percent share in the second quarter of 2001.<sup>254</sup>

The record shows that producers in the subject countries have some excess capacity, some ability to shift exports from other markets to the United States and to shift production from other products to increase subject imports to the United States.<sup>255</sup> Similarly, the cold-rolled steel industries in the thirteen subject countries maintained inventories of 2.8-3.3 million short tons in their home countries between 1999 and 2001, with levels of 2.3 million short tons at the end of June 2002.<sup>256</sup> As a ratio to shipments, however, inventories fluctuated modestly between 3.8 percent and 4.0 percent between 1999 and 2001, and declined to 3.5 percent in the first half of 2002.<sup>257</sup> U.S. inventories from the thirteen subject countries increased from \*\*\* short tons in 1999 to \*\*\* short tons in 2000, then fell to \*\*\* short tons in 2001. As of March 2002 (the last period for which data are available), such U.S. inventories were only

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<sup>252</sup> Views Addendum Table 2.

<sup>253</sup> Views Addendum Table 2.

<sup>254</sup> Memorandum INV-Z-134 at Table J-2.

<sup>255</sup> The cold-rolled steel industries in the thirteen subject countries increased capacity marginally between 1999 and 2001, but operated at relatively high levels of capacity utilization throughout this period. Views Addendum Table 4. Subject capacity increased from 88.2 million short tons in 1999 to 89.1 million short tons in 2001. Capacity utilization was 84.5 percent in 1999, 92.3 percent in 2000, and 88.8 percent in 2001. Through June 2002, subject capacity utilization was 86.0 percent. Exports accounted for 18.2-19.6 percent of total shipments between 1999 and 2001, and for 17.4 percent in the first half of 2002. Views Addendum Table 4.

<sup>256</sup> Views Addendum Table 4.

<sup>257</sup> Views Addendum Table 4.

\*\*\* short tons.<sup>258</sup> We find it unlikely that these countries would increase subject imports to the United States in light of the additional significant tariffs to which these imports will be subject under the Section 201 remedy for the imminent future.<sup>259</sup> <sup>260</sup>

We take into account the product exclusions from the Section 201 relief that have been announced to date. These exclusions total approximately \*\*\* - 236,000 short tons,<sup>261</sup> representing 9.4 percent of 2001 imports and 1.5 percent of 2001 open market consumption. We therefore do not find that these excluded products are likely to be injurious. Moreover, approximately 40,000 to 100,000 short tons of the excluded articles likely represent products as to which the domestic industry had no objection to the exclusion, in part because a number of the excluded products are not made by U.S. producers.<sup>262</sup>

We conclude that it is unlikely that subject imports will increase to significant levels in light of the nature and magnitude of the subject import declines in 2002 in response to the Section 201 remedy, the availability of other markets to the subject producers, and the availability of additional capacity in the United States to supply demand.<sup>263</sup> Because we do not believe that there is a likelihood of substantially increased import volumes, we conclude it is likely that the subject imports will continue not to have significant price effects in the imminent future.

Finally, the record indicates an improving condition for the industry. While the financial performance of individual producers has varied, and the industry overall remains in a loss position, the 2002 data indicates that the Section 201 remedy is providing the industry with the relief necessary to improve its position.<sup>264</sup> Increases in U.S. producers' prices announced toward the end of the period will facilitate the industry's move toward a healthier position, within the context of the average 48-day lead

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<sup>258</sup> Views Addendum Table 6.

<sup>259</sup> As stated above, the rates are 30 percent *ad valorem* in the first year of the safeguards remedy, 24 percent in the second year and 18 percent in the third year.

<sup>260</sup> Petitioners assert that producers in certain subject countries (China, the Netherlands, and Taiwan) subject to recent antidumping duties on hot-rolled flat products have an enhanced incentive to shift their hot-rolled production to cold-rolled production for export to the United States. Bethlehem, et al. Prehearing Brief at 77-78. We do not find this argument persuasive given that cold-rolled imports are subject to the 30 percent Section 20 tariff.

<sup>261</sup> See Bethlehem, et al. comments on Section 201 exclusions (Aug. 26, 2002) at 2 (estimating volume of excluded subject imports, based on 2001 subject imports, at 236,000 short tons); Japan, Brazil, and Thailand Respondents' comments on Section 201 exclusions (Aug. 26, 2002) at 3 (estimating volume of excluded subject imports, based on 2001 subject imports, at \*\*\* short tons).

<sup>262</sup> The Commerce data base shows exclusion requests, apart from the exclusions granted on March 5, 2002, as to which the domestic industry had no objection, of approximately 40,000 short tons. In addition, according to US Steel, most of the exclusions granted as of July 9, 2002 were not objectionable, which, including all the March 5 exclusions, would bring the total non-objectionable exclusions to about 100,000 short tons. See Joint Respondents' Posthearing Brief at 39 (citing statement of July 8, 2002, by CEO of US Steel, that effect of Section 201 exclusions already granted has been minimal because most have been for products they do not make in the United States).

<sup>263</sup> In making this finding, we have considered dumping findings and antidumping remedies in other countries against the same class of merchandise. See 19 U.S.C. § 1677(7)(F)(iii)(I). Exports of cold-rolled steel from six of the cumulated subject countries are subject to antidumping duties, a safeguard measure, or a suspension agreement: Belgium (exports to Canada), Brazil (to Argentina, Canada, and Mexico), France (to China and Hungary), Japan (to China and EU), Korea (to Canada, China, and EU), and Russia (to Argentina, Canada, Colombia, Egypt, Mexico, Philippines, South Africa, Thailand, and Venezuela). CR at VII-45, and PR at VII-14.

<sup>264</sup> Memorandum INV-Z-134 at Table K-1, and PR at Table K-1.

time, as will new contracts negotiated after contracts based on earlier conditions of competition expire.<sup>265</sup> The industry also is characterized by the recent and imminent expansion of capacity at new and efficient production facilities.<sup>266 267</sup>

Accordingly, we find that material injury by reason of the cumulated subject imports will not occur absent issuance of antidumping and countervailing duty orders against the subject imports. We therefore conclude that the domestic cold-rolled steel industry is not threatened with material injury by reason of the subject imports from Belgium, Brazil, China, France, Germany, Japan, Korea, the Netherlands, New Zealand, Russia, Spain, Sweden, and Taiwan.

**C. Statutory Threat Factors: Six Subject Countries Not Subject To Section 201 Remedy**

Although Argentina, India, South Africa, Thailand, Turkey, and Venezuela represent six of the twenty countries subject to these investigations, the cold-rolled steel industries in these countries accounted for less than 12 percent of total subject capacity, production, shipments, and inventories throughout the period 1999-2001 and the first half of 2002.<sup>268</sup> Four of the six countries (India, Thailand, Turkey, and Venezuela) were among the eleven individually negligible sources of subject imports.<sup>269</sup> Combined, the six countries exempted from the safeguard action on flat-rolled steel accounted for only \*\*\* percent of the U.S. open market between 1999 and 2001, and only \*\*\* percent in January-June 2002. These countries accounted for \*\*\* percent or less of the total U.S. market during the same time period.<sup>270</sup>

The record indicates that the volume and market penetration of cumulated subject imports from Argentina, India, South Africa, Taiwan, Turkey, and Venezuela declined following announcement of the Commission's remedy recommendations and the President's actual remedy under Section 201. Specifically, subject import volume from the six countries exempted from the safeguard action on flat-rolled steel fell from \*\*\* short tons in 1999 to \*\*\* short tons in 2000, then partially recovered to \*\*\* short tons in 2001, a net decline of \*\*\* percent. In the first half of 2002, subject import volume from the six exempted countries was \*\*\* short tons, \*\*\*-percent lower than during the first half of 2001.<sup>271</sup> Although these countries are excluded from the Section 201 remedies announced by the President on March 5, 2002, the President stated that the exclusionary status would be revoked for developing countries, in full or in part, if a surge in imports from exempted countries were to undermine the

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<sup>265</sup> CR and PR at Table III-4.

<sup>266</sup> \*\*\*. ISG is restarting cold-rolled production at former LTV facilities in Cleveland, OH, East Chicago, IN, and Hennepin, IL. CR at III-4, n.10, and PR at III-4, n.10.

<sup>267</sup> We note that Commerce has preliminarily found 2 countervailable programs in Brazil, 2 in France, and 13 in Korea, with margins ranging from 8.22 percent to 12.58 percent in Brazil, 1.32 percent in France, and 0.32 percent to 7.00 percent in Korea. CR and PR at Table I-7.

<sup>268</sup> Memorandum INV-Z-134 at Appendix L.

<sup>269</sup> Memorandum INV-Z-134 at Table IV-3, and PR at Table IV-3.

<sup>270</sup> Views Addendum Tables 2 and 3.

<sup>271</sup> Views Addendum Table 2.

effectiveness of the safeguard measure.<sup>272</sup> On July 18, 2002, Commerce announced proposed rules regarding a steel import licensing and surge monitoring system.<sup>273</sup>

The cold-rolled steel industries in the six subject countries increased capacity from 8.4 million short tons in 1999 to 10.5 million short tons in 2001. Capacity utilization was 82.7 percent in 1999, 77.2 percent in 2000, and 76.2 percent in 2001. Through June 2002, subject capacity utilization was 76.0 percent. Exports accounted for 27.9 to 29.5 percent of total shipments between 1999 and 2001, and for 27.3 percent in the first half of 2002.<sup>274</sup> In addition, the cold-rolled steel industries in the six subject countries maintained inventories of 384,643 to 554,697 short tons in their home countries between 1999 and 2001, with levels remaining at 360,002 short tons at the end of June 2002.<sup>275</sup> As a ratio to shipments, inventories fluctuated between 5.5 percent and 7.0 percent between 1999 and 2001, but declined to 4.7 percent in the first half of 2002.<sup>276</sup> U.S. inventories from the six subject countries increased from \*\*\* short tons in 1999 to \*\*\* short tons in 2001. As of March 2002 (the latest period for which data are available), however, such U.S. inventories were only \*\*\* short tons.<sup>277</sup>

We recognize that subject imports from these cumulated countries do not face the same immediate barrier as do imports from those countries covered by the Section 201 remedy. We conclude that it is unlikely that subject imports from these countries will increase to significant levels in light of their current and historically very low levels, the Section 201 monitoring measures applied to these countries,<sup>278</sup> the availability of other markets to the subject producers, the relatively low share of production exported to the United States by these countries during the period examined, and the availability of additional capacity in the United States to supply demand.<sup>279</sup> We also find that the likelihood of a shift of production to cold-rolled products from these countries is diminished by the fact that virtually all carbon and alloy steel flat products are covered by the Section 201 remedy while imports of all flat products from these six countries are excluded from Section 201 tariffs.<sup>280</sup>

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<sup>272</sup> The Presidential Proclamation imposing the Section 201 remedy provides that the safeguard measures shall not apply to imports from a developing country that is a member of the World Trade Organization (WTO) -- as long as that country's share of total imports of the product, based on imports during a recent representative period, does not exceed 3 percent, provided that imports that are the product of all such countries with less than 3 percent of import share collectively account for not more than 9 percent of total imports of the product. If I determine that a surge in imports of a product described in paragraph 7 of a developing country WTO member undermines the effectiveness of the pertinent safeguard measure, the safeguard measure shall be modified to apply to such product from such country.

Proclamation 7529 of March 5, 2002 at ¶ 12 (67 Fed. Reg. at 10555).

<sup>273</sup> 67 Fed. Reg. 47338 (July 18, 2002).

<sup>274</sup> Views Addendum Table 5.

<sup>275</sup> Views Addendum Table 5.

<sup>276</sup> Views Addendum Table 5.

<sup>277</sup> Views Addendum Table 6.

<sup>278</sup> See Proclamation 7529 of March 5, 2002 at ¶ 12 (67 Fed. Reg. at 10555).

<sup>279</sup> CR and PR at Table VII-1. In making this finding, we have considered dumping findings and antidumping remedies in other countries against the same class of merchandise. See 19 U.S.C. § 1677(7)(F)(iii)(I). Exports of cold-rolled steel from Turkey are subject to antidumping duties, a safeguard measure, or a suspension agreement in Canada, China, and the EU. CR at VII-45, and PR at VII-14.

<sup>280</sup> Petitioners assert that certain subject producers (Argentina, India, South Africa, and Thailand) subject to recent antidumping duties on hot-rolled flat products have an enhanced incentive to shift their hot-rolled production to cold-rolled flat products.  
(continued...)

Even if imports from all six excluded countries were to return to their 2001 levels of approximately \*\*\* short tons, this would amount to only \*\*\* percent of the U.S. open market share in 2001 and only \*\*\* percent of the total market.<sup>281</sup> As discussed above, subject imports in general did not have significant price-depressing or -suppressing effects on the domestic like product at the end of the period examined. Because we find that import volumes from these six developing countries will not increase to a significant level, give their relative size and historic presence in the U.S. market, we conclude it is likely that these subject imports will continue not to have significant price effects in the imminent future.

Finally, the record indicates an improving condition for the industry. While the financial performance of individual producers has varied, and the industry overall remains in a loss position, the 2002 data indicates that the Section 201 remedy is providing the industry with the relief necessary to improve its position.<sup>282</sup> Increases in U.S. producers' prices announced toward the end of the period will facilitate the industry's move toward a healthier position, within the context of the average 48-day lead time, as will new contracts negotiated as long term arrangements based on earlier conditions of competition expire. The industry also is characterized by the recent and imminent expansion of capacity at new and efficient production facilities.<sup>283</sup>

Accordingly, we find that material injury by reason of the cumulated subject imports will not occur absent issuance of antidumping and countervailing duty orders against the subject imports. We therefore conclude that the domestic cold-rolled steel industry is not threatened with material injury by reason of the subject imports from Argentina, India, South Africa, Taiwan, Turkey, and Venezuela.

## VII. NO MATERIAL INJURY BY REASON OF SUBJECT IMPORTS FROM AUSTRALIA<sup>284</sup>

### A. Volume of the Subject Imports from Australia

The quantity of subject imports from Australia increased from 4,184 short tons in 1999 to 68,893 short tons in 2000, then decreased to 53,497 short tons in 2001. In the first six months of 2002, subject imports from Australia declined to 6,507 short tons, compared with 22,685 short tons in the first six months of 2001.<sup>285</sup> The share of apparent U.S. consumption in the merchant market accounted for by subject imports from Australia increased from less than 0.05 percent in 1999 to 0.4 percent in 2000, then declined to 0.3 percent in 2001.<sup>286</sup> In the first six months of 2002, subject imports from Australia as a share of apparent merchant market consumption declined to 0.1 percent, compared with a share of 0.3

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<sup>280</sup> (...continued)

rolled production for export to the United States. Bethlehem, et al. Prehearing Brief at 77-78. We do not find this argument persuasive given the low level of imports from Argentina, India, South Africa, and Thailand during the period examined.

<sup>281</sup> Views Addendum Tables 2 and 3.

<sup>282</sup> Memorandum INV-Z-134 at Tables J-1 and J-2.

<sup>283</sup> \*\*\*. ISG is restarting cold-rolled production at former LTV facilities in Cleveland, OH, East Chicago, IN, and Hennepin, IL. CR at III-4, n.10, and PR at III-4, n.10.

<sup>284</sup> See discussion of material injury "In General" at section V.A. supra.

<sup>285</sup> Views Addendum Table 1.

<sup>286</sup> Views Addendum Table 1.

percent in the first six months of 2001.<sup>287</sup> In the total market, including captive consumption, the share of the market held by subject imports from Australia increased from less than 0.05 percent in 1999 to 0.2 percent in both 2000 and 2001.<sup>288</sup> In the first six months of 2002, subject imports from Australia decreased to less than 0.05 percent of the total market, compared with 0.1 percent in the first six months of 2001.<sup>289</sup> Similarly, subject imports from Australia as a percent of domestic production were less than 0.05 percent in 1999, 0.2 percent in both 2000 and 2001, and less than 0.05 percent in the first six months of 2002.<sup>290</sup>

As with the cumulated subject imports, cold-rolled imports from Australia declined sharply in 2002 following the Commission's remedy recommendation and the President's imposition of relief under Section 201.<sup>291</sup> After declining to 6,505 short tons in the first quarter of 2002, compared with 12,912 short tons in the first quarter of 2001, the quantity of subject imports from Australia dropped to a mere 2 short tons in the second quarter of 2002, compared with 9,772 short tons in the second quarter of 2001.<sup>292</sup> As in our analysis of the cumulated subject imports, we do not give less weight to post-petition data, given our finding that the Section 201 relief was a significant condition of competition that occurred in the most recent period examined and was a major factor in the decline in imports from Australia in 2002, notwithstanding any restraining effect of the pending investigation.

In evaluating the significance of subject import volume, we have considered the very low levels of imports from Australia throughout the period, the increase in the volume and market penetration of subject imports from Australia from 1999 to 2000, the decrease in the volume and market penetration of the subject imports from 2000 to 2001, as well as the sharp decline in the volume and market penetration in the first half of 2002, compared with the first half of 2001, and the second quarter of 2002, compared with the second quarter of 2001. We also considered, as discussed in our cumulation analysis, the limited competition between subject imports from Australia and the domestic like product. Virtually all imports from Australia are full-hard steel sold on the open market in the West region. By contrast, while 53.6 percent of U.S. production of cold-rolled steel is full-hard, most of that is internally consumed. Only \*\*\* percent of U.S. producers' shipments of full-hard steel in 2001 were on the open market. In addition, only a very small percent, \*\*\* percent in 2001, of U.S. producers' total commercial shipments are to the West region.<sup>293</sup>

In light of the low and declining levels of subject imports from Australia and the lack of meaningful competition with the domestic like product, we find that the volume of subject imports from Australia is not significant, either in absolute terms or relative to domestic consumption or production.

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<sup>287</sup> Views Addendum Table 1.

<sup>288</sup> Views Addendum Table 3.

<sup>289</sup> Memorandum INV-Z-134 at Table J-1, and PR at Table J-1.

<sup>290</sup> CR and PR at Table C-1.

<sup>291</sup> The lead time for imports from Australia is \*\*\* days, \*\*\* the average for all subject imports. BHP Foreign Producer Questionnaire Response.

<sup>292</sup> Memorandum INV-Z-134 at Table J-1, and PR at Table J-1.

<sup>293</sup> See, e.g., Memorandum INV-Z-134 at Table C-8, and PR at Table C-8; and Australian and New Zealand Respondents' Prehearing Brief at 24-25.

## **B. Price Effects of the Subject Imports From Australia**

As discussed above, the competition between the domestic like product and the subject imports from Australia is very limited. Although there is a moderate to high degree of interchangeability between the domestic and Australian products,<sup>294</sup> the record indicates that the domestic producers were not able to supply full-hard steel in the quantities required by purchasers in the West region.<sup>295</sup> In that regard, a majority of responding purchasers viewed the domestic product as inferior to the Australian product in terms of availability.<sup>296</sup> Purchasers also viewed U.S. mills as somewhat inferior to the suppliers of the Australian product in terms of packaging, product consistency, product quality, product range, technical support/service, and transportation cost.<sup>297</sup> However, the domestic industry had an advantage over the subject imports with respect to lead times.<sup>298</sup> Purchasers viewed U.S. mills as less restrictive in terms of minimum quantity requirements, and somewhat superior in terms of their transportation network.<sup>299</sup>

No pricing data were provided to the Commission comparing subject imports from Australia with the domestic like product. However, the average unit value of imports of full-hard steel from Australia was \*\*\* the average unit value of U.S. producers' shipments of full-hard steel throughout the period examined.<sup>300</sup> Moreover, there were no allegations of lost sales or lost revenues with respect to subject imports from Australia.<sup>301</sup> We therefore find no adverse price effects by reason of subject imports from Australia.

## **C. Impact of the Subject Imports from Australia on the Domestic Industry**

We incorporate here all but the concluding paragraph of section V.D., supra, concerning the impact of the cumulated subject imports on the domestic industry.

We find that subject imports from Australia are not having a significant adverse impact on the domestic industry producing certain cold-rolled steel products, given the insignificant and declining volume of subject imports from Australia during the period examined, the absence of significant price effects,<sup>302</sup> and the attenuated competition between subject imports from Australia and the domestic like product. Accordingly, we determine that the domestic cold-rolled industry is not materially injured by reason of subject imports from Australia.

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<sup>294</sup> CR and PR at Table II-6.

<sup>295</sup> Australian and New Zealand Respondents' Posthearing Brief at 6-10.

<sup>296</sup> CR and PR at Table II-5.

<sup>297</sup> CR and PR at Table II-5; see also CR and PR at Table II-4 regarding relative importance of these factors to purchasers.

<sup>298</sup> CR and PR at Table II-5; CR at II-13 through II-15, PR at II-9 through II-11; and CR at II-10 (lead times), and PR at II-6.

<sup>299</sup> CR and PR at Table II-5; see also CR and PR at Table II-4 regarding relative importance of these factors to purchasers.

<sup>300</sup> Memorandum INV-Z-134 at Table C-8, and PR at Table C-8.

<sup>301</sup> CR and PR at Tables V-7 and V-8.

<sup>302</sup> We find that any effects the subject imports may have had on the domestic industry earlier in the period examined were not significant, and that any effects had diminished by the end of June 2002.

## VIII. NO THREAT OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS FROM AUSTRALIA

The record indicates low volumes and market penetration throughout the period and a significant decline in the volume and market penetration of subject imports from Australia in the first half of 2002, following the Commission's announced remedy recommendation and the President's imposition of the Section 201 remedy. Although subject imports from Australia declined after the filing of the petition in these investigations, we find that, as for the other subject imports, the Section 201 proceedings were a major factor in the decline.

The quantity of subject imports from Australia increased from 4,184 short tons in 1999 to 68,893 short tons in 2000, then decreased to 53,497 short tons in 2001. In the first six months of 2002, subject imports from Australia declined to 6,507 short tons, compared with 22,685 short tons in the first six months of 2001.<sup>303</sup> The share of U.S. apparent consumption in the merchant market accounted for by subject imports from Australia increased from less than 0.05 percent in 1999 to 0.4 percent in 2000, and then declined to 0.3 percent in 2001.<sup>304</sup> In the first six months of 2002, subject imports from Australia as a share of apparent merchant market consumption declined to 0.1 percent, compared with a share of 0.3 percent in the first six months of 2001.<sup>305</sup> In the total market, including captive consumption, the share of the market held by subject imports from Australia increased from less than 0.05 percent in 1999 to 0.2 percent in both 2000 and 2001. In the first six months of 2002, the market share of subject imports from Australia decreased to less than 0.05 percent, compared with 0.1 percent in the first six months of 2001.<sup>306</sup> Similarly, subject imports from Australia as a percent of domestic production were less than 0.05 percent in 1999, 0.2 percent in both 2000 and 2001, and less than 0.05 percent in the first six months of 2002.<sup>307</sup> After declining to 6,505 short tons in the first quarter of 2002, compared with 12,912 short tons in the first quarter of 2001, the quantity of subject imports from Australia dropped to a mere 2 short tons in the second quarter of 2002, compared with 9,772 short tons in the second quarter of 2001.<sup>308</sup>

Although the record shows that the Australian producer has excess capacity and some ability to shift exports from other markets to the United States,<sup>309</sup> we find it unlikely that it will do so in the near future in light of the Section 201 remedy, as already reflected in the sharp decline in the volume of those imports in 2002.<sup>310</sup> We conclude that it is unlikely that the volume of subject imports from Australia will

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<sup>303</sup> Views Addendum Table 1.

<sup>304</sup> Views Addendum Table 1.

<sup>305</sup> Views Addendum Table 1.

<sup>306</sup> Memorandum INV-Z-134 at Table J-1, and PR at Table J-1.

<sup>307</sup> CR and PR at Table C-1.

<sup>308</sup> CR and PR at Table IV-7C; and Memorandum INV-Z-134 at Table J-1, and PR at Table J-1.

<sup>309</sup> Memorandum INV-Z-134 at Table L-3, and PR at Table L-3. BHP Australia's capacity utilization rate was \*\*\* percent in the first half of 2002. BHP's domestic market shipments accounted for \*\*\* (over \*\*\* percent) of its total shipments. BHP Australia held less than \*\*\* percent of its total shipment volume in inventory and had \*\*\* U.S. inventory. Memorandum INV-Z-134 at Table L-3, and PR at Table L-3; and Views Addendum Table 6.

<sup>310</sup> As stated above, the tariff rates are 30 percent ad valorem in the first year of the safeguards remedy, 24 percent in the second year and 18 percent in the third year.

increase to significant levels in light of the nature and magnitude of the subject import declines in 2002 in response to the Section 201 remedy, and the availability of other markets to the subject producer.<sup>311</sup>

As discussed above, the subject imports from Australia did not have significant price-depressing or price-suppressing effects on the domestic like product during the period examined. Because we do not find that there is a likelihood of substantially increased import volumes, we conclude it is unlikely that the subject imports will have significant adverse price effects in the imminent future.

Finally, the record indicates an improving condition for the industry. While the financial performance of individual producers has varied, and the industry overall remains in a loss position, the 2002 data indicates that the Section 201 remedy is providing the industry with the relief necessary to improve its position.<sup>312</sup> Increases in U.S. producers' prices announced toward the end of the period will facilitate the industry's move toward a healthier position, within the context of the average 48-day lead time, as will new contracts negotiated after contracts based on earlier market conditions expire.<sup>313</sup> The industry also is characterized by the recent and imminent expansion of capacity at new and efficient production facilities.<sup>314</sup>

Based on the above, we find that material injury by reason of subject imports from Australia will not occur absent issuance of an antidumping order against those subject imports. We therefore conclude that the domestic certain cold-rolled steel industry is not threatened with material injury by reason of subject imports from Australia.

## **CONCLUSION**

For the foregoing reasons, we determine that the domestic certain cold-rolled steel products industry is neither materially injured nor threatened with material injury by reason of subject imports from Australia, India, Japan, Sweden, and Thailand that are sold in the United States at less than fair value.

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<sup>311</sup> In making this finding, we have considered that there is no indication that the Australian merchandise is subject to antidumping or countervailing duties, safeguard measures, or suspension agreements in any other country. CR at VII-45, and PR at VII-14. BHP Australia sold its full-hard steel to only two customers, \*\*\* for processing into galvanized sheet. Australian and New Zealand Respondents' Prehearing Brief at 1. Subsequent to the Section 201 remedy action on flat-rolled steel (including cold-rolled), Pinole Point's domestic galvanizing facility was closed.

<sup>312</sup> Memorandum INV-Z-134 at Table K-1, and PR at Table K-1.

<sup>313</sup> CR and PR at Table III-4.

<sup>314</sup> \*\*\*. CR and PR at Table III-4. ISG is restarting the former LTV facilities in Cleveland, OH, East Chicago, IN, and Hennepin, IL. CR at III-4, n.10, and PR at III-4, n.10.

Cold-Rolled Steel

Views Addendum Table 1

Cold-rolled steel: Summary data concerning the U.S. open market, 1999-2001, January-March 2001, January-March 2002, January-June 2001, and January-June 2002

Item	Reported data							Period changes				
	Calendar year			January-March		January-June		Calendar year			Jan.-Mar.	Jan.-Jun.
	1999	2000	2001	2001	2002	2001	2002	1999-01	1999-00	2000-01	2001-02	2001-02
	<b>Quantity (short tons)</b>							<b>Percent</b>				
U.S. open-market consumption	18,161,041	18,159,494	15,799,631	4,026,569	3,608,151	6,939,061	6,920,214	-13.0	0.0	-13.0	-10.4	-0.3
U.S. producers':												
U.S. commercial shipments	14,099,991	14,853,305	12,151,578	3,228,587	2,934,124	5,280,943	5,768,314	-13.8	5.3	-18.2	-9.1	9.2
U.S. company transfers <sup>1</sup>	953,804	754,684	751,798	184,426	186,903	354,505	392,509	-21.2	-20.9	-0.4	1.3	10.7
Total U.S. shipments	15,053,795	15,607,989	12,903,376	3,413,013	3,121,027	5,635,448	6,160,823	-14.3	3.7	-17.3	-8.6	9.3
U.S. imports from:												
Argentina	130,830	***	136,984	35,871	0	66,327	0	4.7	***	***	-100.0	-100.0
Belgium	303,864	255,786	168,845	15,031	363	51,663	9,301	-44.4	-15.8	-34.0	-97.6	-82.0
Brazil	***	***	***	***	***	116,825	15,816	***	***	***	***	-86.5
China	55,655	45,907	92,743	12,219	37,216	33,908	37,216	66.6	-17.5	102.0	204.6	9.8
France	***	***	106,245	32,020	24,920	60,657	30,716	***	***	***	-22.2	-49.4
Germany <sup>2</sup>	***	***	***	***	***	***	***	***	***	***	***	***
India <sup>2 3</sup>	***	***	***	***	***	***	***	***	***	***	***	***
Japan	***	***	***	***	***	132,564	75,714	***	***	***	***	-42.9
Korea	***	***	***	***	***	179,839	59,384	***	***	***	***	-67.0
The Netherlands <sup>2</sup>	***	***	***	***	***	***	***	***	***	***	***	***
New Zealand	27,422	29,409	23,175	5,370	5,438	11,567	5,438	-15.5	7.2	-21.2	1.3	-53.0
Russia	415,866	262,246	295,545	60,691	105,410	139,922	105,410	-28.9	-36.9	12.7	73.7	-24.7
South Africa	85,474	27,419	89,221	47	24,233	28,682	24,233	4.4	-67.9	225.4	51,685.0	-15.5
Spain <sup>4</sup>	1,226	593	333	103	106	235	128	-72.8	-51.6	-43.8	2.9	-45.7
Sweden	***	***	***	***	***	15,899	4,289	***	***	***	***	-73.0
Taiwan	80,605	20,842	98,388	9,795	9,478	18,904	9,495	22.1	-74.1	372.1	-3.2	-49.8
Thailand	73,475	6,039	22,889	8,434	0	18,513	0	-68.8	-91.8	279.0	-100.0	-100.0
Turkey	85,291	37,989	67,200	17,568	1,778	47,330	1,778	-21.2	-55.5	76.9	-89.9	-96.2
Venezuela	58,495	9,566	52,737	21,089	18,443	30,581	18,443	-9.8	-83.6	451.3	-12.5	-39.7
Subtotal	2,478,687	1,675,934	2,401,109	467,909	373,566	1,041,544	460,857	-3.1	-32.4	43.3	-20.2	-55.8
Australia	4,184	68,893	53,497	12,912	6,505	22,685	6,507	1,178.5	1,546.5	-22.3	-49.6	-71.3
All other sources	624,375	806,678	441,649	132,735	107,053	239,385	292,027	-29.3	29.2	-45.3	-19.3	22.0
Total imports	3,107,246	2,551,505	2,896,255	613,556	487,124	1,303,613	759,391	-6.8	-17.9	13.5	-20.6	-41.7
	<b>Ratios (percent)</b>							<b>Percentage points</b>				
Producers' share:												
U.S. commercial shipments	77.6	81.8	76.9	80.2	81.3	76.1	83.4	-0.7	4.2	-4.9	1.1	7.3
U.S. company transfers <sup>1</sup>	5.3	4.2	4.8	4.6	5.2	5.1	5.7	-0.5	-1.1	0.6	0.6	0.6
Total U.S. shipments	82.9	85.9	81.7	84.8	86.5	81.2	89.0	-1.2	3.1	-4.3	1.7	7.8
Importers' share:												
Argentina	0.7	***	0.9	0.9	0.0	1.0	0.0	0.1	***	***	-0.9	-1.0
Belgium	1.7	1.4	1.1	0.4	( <sup>5</sup> )	0.7	0.1	-0.6	-0.3	-0.3	-0.4	-0.6
Brazil	***	***	***	***	***	1.7	0.2	***	***	***	***	-1.5
China	0.3	0.3	0.6	0.3	1.0	0.5	0.5	0.3	-0.1	0.3	0.7	0.0
France	***	***	0.7	0.8	0.7	0.9	0.4	***	***	***	-0.1	-0.4
Germany <sup>2</sup>	***	***	***	***	***	***	***	***	***	***	***	***
India <sup>2 3</sup>	***	***	***	***	***	***	***	***	***	***	***	***
Japan	***	***	***	***	***	1.9	1.1	***	***	***	***	-0.8
Korea	***	***	***	***	***	2.6	0.9	***	***	***	***	-1.7
The Netherlands <sup>2</sup>	***	***	***	***	***	***	***	***	***	***	***	***
New Zealand	0.2	0.2	0.1	0.1	0.2	0.2	0.1	0.0	0.0	0.0	0.0	-0.1
Russia	2.3	1.4	1.9	1.5	2.9	2.0	1.5	-0.4	-0.8	0.4	1.4	-0.5
South Africa	0.5	0.2	0.6	( <sup>5</sup> )	0.7	0.4	0.4	0.1	-0.3	0.4	0.7	-0.1
Spain <sup>4</sup>	( <sup>5</sup> )	( <sup>5</sup> )	( <sup>5</sup> )	( <sup>5</sup> )	( <sup>5</sup> )	( <sup>5</sup> )	( <sup>5</sup> )	0.0	0.0	0.0	0.0	0.0
Sweden	***	***	***	***	***	0.2	0.1	***	***	***	***	-0.2
Taiwan	0.4	0.1	0.6	0.2	0.3	0.3	0.1	0.2	-0.3	0.5	0.0	-0.1
Thailand	0.4	( <sup>5</sup> )	0.1	0.2	0.0	0.3	0.0	-0.3	-0.4	0.1	-0.2	-0.3
Turkey	0.5	0.2	0.4	0.4	( <sup>5</sup> )	0.7	( <sup>5</sup> )	0.0	-0.3	0.2	-0.4	-0.7
Venezuela	0.3	0.1	0.3	0.5	0.5	0.4	0.3	0.0	-0.3	0.3	0.0	-0.2
Subtotal	13.6	9.2	15.2	11.6	10.4	15.0	6.7	1.5	-4.4	6.0	-1.3	-8.4
Australia	( <sup>5</sup> )	0.4	0.3	0.3	0.2	0.3	0.1	0.3	0.4	0.0	-0.1	-0.2
All other sources	3.4	4.4	2.8	3.3	3.0	3.5	4.2	-0.6	1.0	-1.6	-0.3	0.8
Total imports	17.1	14.1	18.3	15.2	13.5	18.8	11.0	1.2	-3.1	4.3	-1.7	-7.8

1 \*\*\*.

2 Foreign producers' reported exports to U.S. used as U.S. imports.

3 For the January-March periods six Indian firms reported data; however, for the January-June periods only three firms reported data.

4 Data for Spain have been adjusted to exclude nonsubject imports.

5 Less than 0.05 percent.

Note.--Because of rounding, figures may not add to the totals shown; shares are calculated from the unrounded figures. Except as noted imports are DOC (adjusted) for 1999-2001 and the January-March periods and unadjusted DOC for the January-June periods.

Source: Compiled from data submitted in response to Commission questionnaires and from official Commerce statistics.

Views Addendum Table 2

Cold-rolled steel: Summary data concerning the U.S. open market, 1999-2001, January-March 2001, January-March 2002, January-June 2001, and January-June 2002

Item	Reported data						Period changes					
	Calendar year			January-March		January-June		Calendar year			Jan.-Mar.	Jan.-Jun.
	1999	2000	2001	2001	2002	2001	2002	1999-01	1999-00	2000-01	2001-02	2001-02
	Quantity (short tons)						Percent					
U.S. open-market consumption	18,161,041	18,159,494	15,799,631	4,026,569	3,608,151	6,939,061	6,920,214	-13.0	0.0	-13.0	-10.4	-0.3
U.S. producers':												
U.S. commercial shipments	14,099,991	14,853,305	12,151,578	3,228,587	2,934,124	5,280,943	5,768,314	-13.8	5.3	-18.2	-9.1	9.2
U.S. company transfers <sup>1</sup>	953,804	754,684	751,798	184,426	186,903	354,505	392,509	-21.2	-20.9	-0.4	1.3	10.7
Total U.S. shipments	15,053,795	15,607,989	12,903,376	3,413,013	3,121,027	5,635,448	6,160,823	-14.3	3.7	-17.3	-8.6	9.3
U.S. imports from:												
Belgium	303,864	255,786	168,845	15,031	363	51,663	9,301	-44.4	-15.8	-34.0	-97.6	-82.0
Brazil	***	***	***	***	***	116,825	15,816	***	***	***	***	-86.5
China	55,655	45,907	92,743	12,219	37,216	33,908	37,216	66.6	-17.5	102.0	204.6	9.8
France	***	***	106,245	32,020	24,920	60,657	30,716	***	***	***	-22.2	-49.4
Germany <sup>2</sup>	***	***	***	***	***	***	***	***	***	***	***	***
Japan	***	***	***	***	***	132,564	75,714	***	***	***	***	-42.9
Korea	***	***	***	***	***	179,839	59,384	***	***	***	***	-67.0
The Netherlands <sup>3</sup>	***	***	***	***	***	***	***	***	***	***	***	***
New Zealand	27,422	29,409	23,175	5,370	5,438	11,567	5,438	-15.5	7.2	-21.2	1.3	-53.0
Russia	415,866	262,246	295,545	60,691	105,410	139,922	105,410	-28.9	-36.9	12.7	73.7	-24.7
Spain <sup>3</sup>	1,226	593	333	103	106	235	128	-72.8	-51.6	-43.8	2.9	-45.7
Sweden	***	***	***	***	***	15,899	4,289	***	***	***	***	-73.0
Taiwan	80,605	20,842	98,388	9,795	9,478	18,904	9,495	22.1	-74.1	372.1	-3.2	-49.8
Subtotal (13)	***	***	***	***	***	***	***	***	***	***	***	***
Argentina	130,830	***	136,984	35,871	0	66,327	0	4.7	***	***	-100.0	-100.0
India <sup>4</sup>	***	***	***	***	***	***	***	***	***	***	***	***
South Africa	85,474	27,419	89,221	47	24,233	28,682	24,233	4.4	-67.9	225.4	51,685.0	-15.5
Thailand	73,475	6,039	22,889	8,434	0	18,513	0	-68.8	-91.8	279.0	-100.0	-100.0
Turkey	85,291	37,989	67,200	17,568	1,778	47,330	1,778	-21.2	-55.5	76.9	-89.9	-96.2
Venezuela	58,495	9,566	52,737	21,089	18,443	30,581	18,443	-9.8	-83.6	451.3	-12.5	-39.7
Subtotal (6)	***	***	***	***	***	***	***	***	***	***	***	***
Australia	4,184	68,893	53,497	12,912	6,505	22,685	6,507	1,178.5	1,546.5	-22.3	-49.6	-71.3
All other sources	624,375	806,678	441,649	132,735	107,053	239,385	292,027	-29.3	29.2	-45.3	-19.3	22.0
Total imports	3,107,246	2,551,505	2,896,255	613,556	487,124	1,303,613	759,391	-6.8	-17.9	13.5	-20.6	-41.7
	Ratios (percent)						Percentage points					
Producers' share:												
U.S. commercial shipments	77.6	81.8	76.9	80.2	81.3	76.1	83.4	-0.7	4.2	-4.9	1.1	7.3
U.S. company transfers <sup>1</sup>	5.3	4.2	4.8	4.6	5.2	5.1	5.7	-0.5	-1.1	0.6	0.6	0.6
Total U.S. shipments	82.9	85.9	81.7	84.8	86.5	81.2	89.0	-1.2	3.1	-4.3	1.7	7.8
Importers' share:												
Belgium	1.7	1.4	1.1	0.4	( <sup>5</sup> )	0.7	0.1	-0.6	-0.3	-0.3	-0.4	-0.6
Brazil	***	***	***	***	***	1.7	0.2	***	***	***	***	-1.5
China	0.3	0.3	0.6	0.3	1.0	0.5	0.5	0.3	-0.1	0.3	0.7	0.0
France	***	***	0.7	0.8	0.7	0.9	0.4	-0.2	-0.0	-0.2	-0.1	-0.4
Germany <sup>2</sup>	***	***	***	***	***	***	***	***	***	***	***	***
Japan	***	***	***	***	***	1.9	1.1	***	***	***	***	-0.8
Korea	***	***	***	***	***	2.6	0.9	***	***	***	***	-1.7
The Netherlands <sup>3</sup>	***	***	***	***	***	***	***	***	***	***	***	***
New Zealand	0.2	0.2	0.1	0.1	0.2	0.2	0.1	-0.0	0.0	-0.0	0.0	-0.1
Russia	2.3	1.4	1.9	1.5	2.9	2.0	1.5	-0.4	-0.8	0.4	1.4	-0.5
Spain <sup>3</sup>	( <sup>5</sup> )	( <sup>5</sup> )	( <sup>5</sup> )	( <sup>5</sup> )	( <sup>5</sup> )	( <sup>5</sup> )	( <sup>5</sup> )	0.0	0.0	0.0	0.0	0.0
Sweden	***	***	***	***	***	0.2	0.1	***	***	***	***	-0.2
Taiwan	0.4	0.1	0.6	0.2	0.3	0.3	0.1	0.2	-0.3	0.5	0.0	-0.1
Subtotal (13)	***	***	***	***	***	***	***	***	***	***	***	***
Argentina	0.7	***	0.9	0.9	0.0	1.0	0.0	0.1	***	***	-0.9	-1.0
India <sup>4</sup>	***	***	***	***	***	***	***	***	***	***	***	***
South Africa	0.5	0.2	0.6	( <sup>5</sup> )	0.7	0.4	0.4	0.1	-0.3	0.4	0.7	-0.1
Thailand	0.4	( <sup>5</sup> )	0.1	0.2	0.0	0.3	0.0	-0.3	-0.4	0.1	-0.2	-0.3
Turkey	0.5	0.2	0.4	0.4	( <sup>5</sup> )	0.7	( <sup>5</sup> )	-0.0	-0.3	0.2	-0.4	-0.7
Venezuela	0.3	0.1	0.3	0.5	0.5	0.4	0.3	0.0	-0.3	0.3	-0.0	-0.2
Subtotal (6)	***	***	***	***	***	***	***	***	***	***	***	***
Australia	( <sup>5</sup> )	0.4	0.3	0.3	0.2	0.3	0.1	0.3	0.4	-0.0	-0.1	-0.2
All other sources	3.4	4.4	2.8	3.3	3.0	3.4	4.2	-0.6	1.0	-1.6	-0.3	0.8
Total imports	17.1	14.1	18.3	15.2	13.5	18.8	11.0	1.2	-3.1	4.3	-1.7	-7.8

<sup>1</sup> \*\*\*

<sup>2</sup> Foreign producers' reported exports to U.S. used as U.S. imports.

<sup>3</sup> Data for Spain have been adjusted to exclude nonsubject imports.

<sup>4</sup> For the January-March periods six Indian firms reported data; however, for the January-June periods only three firms reported data.

<sup>5</sup> Less than 0.05 percent.

Note.--Because of rounding, figures may not add to the totals shown; shares are calculated from the unrounded figures. Except as noted imports are DOC (adjusted) for 1999-2001 and the January-March periods and unadjusted DOC for the January-June periods.

Source: Compiled from data submitted in response to Commission questionnaires and from official Commerce statistics.

Views Addendum Table 3

Cold-rolled steel: Summary data concerning the U.S. market, 1999-2001, January-March 2001, January-March 2002, January-June 2001, and January-June 2002

Item	Reported data						Period changes					
	Calendar year			January-March		January-June		Calendar year			Jan.-Mar.	Jan.-Jun.
	1999	2000	2001	2001	2002	2001	2002	1999-01	1999-00	2000-01	2001-02	2001-02
	Quantity (short tons)						Percent					
U.S. open-market consumption	39,842,746	39,620,695	35,582,831	9,064,987	8,557,919	16,096,141	17,222,158	-10.7	-0.6	-10.2	-5.6	7.0
U.S. producers	36,735,500	37,069,190	32,686,576	8,451,431	8,070,795	14,792,528	16,462,767	-11.0	0.9	-11.8	-4.5	11.3
U.S. imports from:												
Belgium	303,864	255,786	168,845	15,031	363	51,663	9,301	-44.4	-15.8	-34.0	-97.6	-82.0
Brazil	***	***	***	***	***	116,825	15,816	***	***	***	***	-86.5
China	55,655	45,907	92,743	12,219	37,216	33,908	37,216	66.6	-17.5	102.0	204.6	9.8
France	***	***	106,245	32,020	24,920	60,657	30,716	***	***	***	-22.2	-49.4
Germany <sup>1</sup>	***	***	***	***	***	***	***	***	***	***	***	***
Japan	***	***	***	***	***	132,564	75,714	***	***	***	***	-42.9
Korea	***	***	***	***	***	179,839	59,384	***	***	***	***	-67.0
The Netherlands <sup>1</sup>	***	***	***	***	***	***	***	***	***	***	***	***
New Zealand	27,422	29,409	23,175	5,370	5,438	11,567	5,438	-15.5	7.2	-21.2	1.3	-53.0
Russia	415,866	262,246	295,545	60,691	105,410	139,922	105,410	-28.9	-36.9	12.7	73.7	-24.7
Spain <sup>2</sup>	1,226	593	333	103	106	235	128	-72.8	-51.6	-43.8	2.9	-45.7
Sweden	***	***	***	***	***	15,899	4,289	***	***	***	***	-73.0
Taiwan	80,605	20,842	98,388	9,795	9,478	18,904	9,495	22.1	-74.1	372.1	-3.2	-49.8
Subtotal (13)	***	***	***	***	***	***	***	***	***	***	***	***
Argentina	130,830	***	136,984	35,871	0	66,327	0	4.7	***	***	-100.0	-100.0
India <sup>3</sup>	***	***	***	***	***	***	***	***	***	***	***	***
South Africa	85,474	27,419	89,221	47	24,233	28,682	24,233	4.4	-67.9	225.4	51,685.0	-15.5
Thailand	73,475	6,039	22,889	8,434	0	18,513	0	-68.8	-91.8	279.0	-100.0	-100.0
Turkey	85,291	37,989	67,200	17,568	1,778	47,330	1,778	-21.2	-55.5	76.9	-89.9	-96.2
Venezuela	58,495	9,566	52,737	21,089	18,443	30,581	18,443	-9.8	-83.6	451.3	-12.5	-39.7
Subtotal (6)	***	***	***	***	***	***	***	***	***	***	***	***
Australia	4,184	68,893	53,497	12,912	6,505	22,685	6,507	1,178.5	1,546.5	-22.3	-49.6	-71.3
All other sources	624,375	806,678	441,649	132,735	107,053	239,385	292,027	-29.3	29.2	-45.3	-19.3	22.0
Total imports	3,107,246	2,551,505	2,896,255	613,556	487,124	1,303,613	759,391	-6.8	-17.9	13.5	-20.6	-41.7
	Ratios (percent)						Percentage points					
Producers' share:	92.2	93.6	91.9	93.2	94.3	91.9	95.6	-0.3	1.4	-1.7	1.1	3.7
Importers' share:												
Belgium	0.8	0.6	0.5	0.2	( <sup>4</sup> )	0.3	0.1	-0.3	-0.1	-0.2	-0.2	-0.3
Brazil	***	***	***	***	***	0.7	0.1	***	***	***	***	-0.6
China	0.1	0.1	0.3	0.1	0.4	0.2	0.2	0.1	0.0	0.1	0.3	0.0
France	***	***	0.3	0.4	0.3	0.4	0.2	***	***	***	-0.1	-0.2
Germany <sup>1</sup>	***	***	***	***	***	***	***	***	***	***	***	***
Japan	***	***	***	***	***	0.8	0.4	***	***	***	***	-0.4
Korea	***	***	***	***	***	1.1	0.3	***	***	***	***	-0.8
The Netherlands <sup>1</sup>	***	***	***	***	***	***	***	***	***	***	***	***
New Zealand	0.1	0.1	0.1	0.1	0.1	0.1	( <sup>4</sup> )	0.0	0.0	0.0	0.0	-0.1
Russia	1.0	0.7	0.8	0.7	1.2	0.9	0.6	-0.2	-0.4	0.2	0.6	-0.3
Spain <sup>2</sup>	( <sup>4</sup> )	( <sup>4</sup> )	( <sup>4</sup> )	( <sup>4</sup> )	( <sup>4</sup> )	( <sup>4</sup> )	( <sup>4</sup> )	0.0	0.0	0.0	0.0	0.0
Sweden	***	***	***	***	***	0.1	( <sup>4</sup> )	***	***	***	***	-0.1
Taiwan	0.2	0.1	0.3	0.1	0.1	0.1	0.1	0.1	-0.2	0.2	0.0	-0.1
Subtotal (13)	***	***	***	***	***	***	***	***	***	***	***	***
Argentina	0.3	***	0.4	0.4	0.0	0.4	0.0	0.1	***	***	-0.4	-0.4
India <sup>3</sup>	***	***	***	***	***	***	***	***	***	***	***	***
South Africa	0.2	0.1	0.3	( <sup>4</sup> )	0.3	0.2	0.1	0.0	-0.1	0.2	0.3	0.0
Thailand	0.2	( <sup>4</sup> )	0.1	0.1	0.0	0.1	0.0	-0.1	-0.2	0.1	-0.1	-0.1
Turkey	0.2	0.1	0.2	0.2	( <sup>4</sup> )	0.3	( <sup>4</sup> )	0.0	-0.1	0.1	-0.2	-0.3
Venezuela	0.1	( <sup>4</sup> )	0.1	0.2	0.2	0.2	0.1	0.0	-0.1	0.1	0.0	-0.1
Subtotal (6)	***	***	***	***	***	***	***	***	***	***	***	***
Australia	( <sup>4</sup> )	0.2	0.2	0.1	0.1	0.1	( <sup>4</sup> )	0.2	0.2	0.0	-0.1	-0.1
All other sources	1.6	2.0	1.2	1.5	1.3	1.5	1.7	-0.3	0.5	-0.8	-0.2	0.2
Total imports	7.8	6.4	8.1	6.8	5.7	8.1	4.4	0.3	-1.4	1.7	-1.1	-3.7

<sup>1</sup> Foreign producers' reported exports to U.S. used as U.S. imports.<sup>2</sup> Data for Spain have been adjusted to exclude nonsubject imports.<sup>3</sup> For the January-March periods six Indian firms reported data; however, for the January-June periods only three firms reported data.<sup>4</sup> Less than 0.05 percent.

Note.--Because of rounding, figures may not add to the totals shown; shares are calculated from the unrounded figures. Except as noted imports are DOC (adjusted) for 1999-2001 and the January-March periods and unadjusted DOC for the January-June periods.

Source: Compiled from data submitted in response to Commission questionnaires and from official Commerce statistics.

**Views Addendum Table 4**

**Cold-rolled steel: Summary data for producers in 13 countries,<sup>1</sup> 1999-2001, January-June 2001, January-June 2002, and projections for 2002 and 2003**

Item	Actual experience					Projections	
	Calendar year			January-June		Calendar year	
	1999	2000	2001	2001	2002	2002	2003
	<b>Quantity (short tons)</b>						
Capacity	88,152,610	90,076,853	89,107,718	44,650,147	45,747,462	90,031,118	90,197,973
Production	74,479,935	83,161,926	79,139,718	40,173,036	39,328,882	80,501,915	81,099,606
Ending inventory	2,818,923	3,322,195	3,142,154	3,115,828	2,769,457	3,160,968	3,233,264
Shipments:							
Internal consumption/ company transfers	37,619,425	42,809,556	42,349,676	21,321,088	21,438,705	44,069,226	44,472,611
Home market	22,361,984	23,670,990	22,485,445	11,729,608	11,376,854	23,067,575	22,484,060
Exports to:							
United States	1,844,351	1,499,038	1,975,361	810,618	246,989	571,605	632,782
All other sources	12,597,069	14,676,816	12,496,132	6,512,965	6,643,287	12,787,638	13,432,027
Total exports	14,441,420	16,175,854	14,471,493	7,323,583	6,890,276	13,359,243	14,064,809
Total shipments	74,422,829	82,656,399	79,306,614	40,374,279	39,705,835	80,496,044	81,021,480
	<b>Ratios and shares (percent)</b>						
Capacity utilization	84.5	92.3	88.8	90.0	86.0	89.4	89.9
Inventories/production	3.8	4.0	4.0	3.9	3.5	3.9	4.0
Inventories/shipments	3.8	4.0	4.0	3.9	3.5	3.9	4.0
Share of total shipments:							
Internal consumption/ company transfers	50.5	51.8	53.4	52.8	54.0	54.7	54.9
Home market	30.0	28.6	28.4	29.1	28.7	28.7	27.8
Exports to:							
United States	2.5	1.8	2.5	2.0	0.6	0.7	0.8
All other sources	16.9	17.8	15.8	16.1	16.7	15.9	16.6
Total exports	19.4	19.6	18.2	18.1	17.4	16.6	17.4

<sup>1</sup> Belgium, Brazil, China, France, Germany, Japan, Korea, the Netherlands, New Zealand, Russia, Spain, Sweden, and Taiwan.

Source: Compiled from data submitted in response to Commission questionnaires.

## Views Addendum Table 5

Cold-rolled steel: Summary data for producers in 6 countries,<sup>1</sup> 1999-2001, January-June 2001, January-June 2002, and projections for 2002 and 2003

Item	Actual experience					Projections	
	Calendar year			January-June		Calendar year	
	1999	2000	2001	2001	2002	2002	2003
	<b>Quantity (short tons)</b>						
Capacity	8,439,662	10,476,223	10,476,223	4,893,036	4,954,723	10,477,223	10,537,891
Production	6,975,807	8,085,323	7,981,196	3,827,835	3,767,210	9,044,217	9,726,212
Ending inventory	384,643	554,697	443,946	510,303	360,002	468,815	461,484
Shipments:							
Internal consumption/ company transfers	2,063,227	2,297,083	2,360,776	1,068,778	1,086,757	2,700,782	2,662,156
Home market	2,872,940	3,386,753	3,343,918	1,614,420	1,705,437	3,937,635	4,690,686
Exports to:							
United States	359,258	241,155	322,935	169,355	18,925	106,209	240,523
All other sources	1,685,958	1,958,621	2,065,202	1,001,367	1,028,913	2,270,429	2,153,634
Total exports	2,045,216	2,199,776	2,388,137	1,170,722	1,047,838	2,376,638	2,394,157
Total shipments	6,981,383	7,883,612	8,092,831	3,853,920	3,840,032	9,015,055	9,746,999
	<b>Ratios and shares (percent)</b>						
Capacity utilization	82.7	77.2	76.2	78.2	76.0	86.3	92.3
Inventories/production	5.5	6.9	5.6	6.7	4.8	5.2	4.7
Inventories/shipments	5.5	7.0	5.5	6.6	4.7	5.2	4.7
Share of total shipments:							
Internal consumption/ company transfers	29.6	29.1	29.2	27.7	28.3	30.0	27.3
Home market	41.2	43.0	41.3	41.9	44.4	43.7	48.1
Exports to:							
United States	5.1	3.1	4.0	4.4	0.5	1.2	2.5
All other sources	24.1	24.8	25.5	26.0	26.8	25.2	22.1
Total exports	29.3	27.9	29.5	30.4	27.3	26.4	24.6

<sup>1</sup> Argentina, India, South Africa, Thailand, Turkey, and Venezuela.

Source: Compiled from data submitted in response to Commission questionnaires.

**Views Addendum Table 6**  
**Cold-rolled steel: U.S. importers' end-of-period inventories of imports, 1999-2001, January-March 2001,**  
**and January-March 2002**

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**CERTAIN COLD-ROLLED STEEL PRODUCTS FROM  
AUSTRALIA, INDIA, JAPAN, SWEDEN, AND THAILAND**

**Investigations Nos. 731-TA-965, 971-972, 979, and 981 (Final)**

**DISSENTING VIEWS OF COMMISSIONER LYNN M. BRAGG**

Based upon the record in these final phase investigations, I find that an industry in the United States is materially injured by reason of imports of certain cold-rolled steel products from Australia, India, Japan, Sweden, and Thailand, that have been found to be sold in the United States at less than fair value (“LTFV”). I therefore dissent from the negative determination rendered by the Commission.

Before proceeding to a discussion of my separate injury analysis, I offer these general observations. Upon review, I find that the record before the Commission clearly demonstrates that the domestic industry producing certain cold-rolled steel products has experienced material injury over the period of investigation (“POI”) as a result of the depressed pricing levels that prevailed in the U.S. market; the question presented in this case is solely one of causation. Upon further review, I find that the predominant cause of material injury to the domestic industry are the significant negative price effects of subject imports in the U.S. market which reflect the significant incidence of underselling evident on the record. Importantly, the significant negative price effects of subject imports are pervasive and remain evident even in the most recent data available on the record. My injury analysis is driven by these significant negative price effects, and it is by virtue of these price effects that I find that both the absolute volume of subject imports, and the increase in subject import volume over most of the POI, are also significant; finally, I find that the domestic industry suffered a significant adverse impact as a result of the significant negative price effects attributable to low-priced subject imports.

I also raise two collateral points that are addressed in further detail below: first, my determination rests on an analytically consistent evaluation of the entire POI, which ensures a balanced perspective and understanding of the role of subject imports in the U.S. market and of the condition and performance of the domestic industry. Second, I do not view the recent imposition of a section 201 safeguard remedy as being relevant to my analysis, except to the extent that such remedy masks the injurious presence of subject imports in the U.S. market. Accordingly, I do not reject compelling evidence of present material injury by reason of subject imports simply because the most recent data available on the record indicate some interim improvement in the performance of the domestic industry, particularly since the most recent data reflect in part the impact of the filing of the petitions in these investigations and the imposition of provisional duties.

**I. DOMESTIC LIKE PRODUCT**

**A. General Framework**

To determine whether an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”<sup>1</sup> Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant domestic industry as the “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major

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<sup>1</sup> 19 U.S.C. § 1677(4)(A).

proportion of the total domestic production of the product.”<sup>2</sup> In turn, the Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation....”<sup>3</sup>

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.<sup>4</sup> No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.<sup>5</sup> The Commission looks for clear dividing lines among possible like products, and disregards minor variations.<sup>6</sup> Although the Commission must accept the determination of the Department of Commerce (“Commerce”) as to the scope of the imported merchandise allegedly subsidized or sold at less than fair value, the Commission determines what domestic product is like the imported articles Commerce has identified.<sup>7</sup>

## **B. Product Description**

The scope of these investigations as defined by Commerce covers a range of cold-rolled steel products.<sup>8</sup> The term “cold-rolling” refers to a process in which the product is fed into a rolling mill at ambient temperature; cold-rolling can be performed for a variety of reasons, including a desire to reduce product thickness, or a need to impart either specific mechanical properties or surface texture.<sup>9</sup> Cold-rolled steel products are used in a variety of applications including automotive, construction, container,

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<sup>2</sup> *Id.*

<sup>3</sup> 19 U.S.C. § 1677(10).

<sup>4</sup> *See, e.g., NEC Corp. v. Department of Commerce*, 36 F. Supp.2d 380, 383 (Ct. Int’l Trade 1998); *Nippon Steel Corp. v. United States*, 19 CIT 450, 455 (1995); *Torrington Co. v. United States*, 747 F. Supp. 744, 749 n.3 (Ct. Int’l Trade 1990), *aff’d*, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’ ”). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes, and production employees; and, where appropriate, (6) price. *See Nippon*, 19 CIT at 455, n.4; *Timken Co. v. United States*, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

<sup>5</sup> *See, e.g., S. Rep. No. 96-249*, at 90-91 (1979).

<sup>6</sup> *Nippon Steel*, 19 CIT at 455; *Torrington*, 747 F. Supp. at 748-49; *see also S. Rep. No. 96-249*, at 90-91 (1979) (Congress has indicated that the domestic like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”).

<sup>7</sup> *Hosiden Corp. v. Advanced Display Mfrs.*, 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single domestic like product corresponding to several different classes or kinds defined by Commerce); *Torrington*, 747 F. Supp. at 748-52 (affirming Commission’s determination of six domestic like products in investigations where Commerce found five classes or kinds).

<sup>8</sup> A full statement of the scope of these investigations is contained in Appendix I to Commerce’s final LTFV determination concerning Australia. *See* 67 Fed. Reg. 47,509, 47,510 (July 19, 2002) (Appendix I–Scope of the AD/CVD Investigations on Certain Cold-Rolled Steel Products); *see also* Confidential Report (“CR”) at Appendix A and Public Report (“PR”) at Appendix A. Commerce subsequently published clerical corrections to the exclusion descriptions of porcelain enameling sheet and texture-rolled steel strip. *See* 67 Fed. Reg. 52,934 (August 14, 2002); *see also* CR/PR at Appendix A.

<sup>9</sup> CR at I-20; PR at I-17.

appliance, and electrical equipment manufacturing; cold-rolled steel is also used for automotive transmission and seat belt components, and serves as a material for utensils, cutting tools, and cutlery.<sup>10</sup>

### **C. Domestic Like Product**

I note that in the Preliminary Determination, I joined a unanimous Commission in defining a single domestic like product comprised of the continuum of all certain cold-rolled steel products falling within the scope.<sup>11</sup> Upon review, I remain satisfied that there exists a sufficient range of broadly similar product falling within the scope to constitute a continuum comprised of different cold-rolled steels with unique specifications, production processes, and end-uses. Respondent parties variously argue that the Commission should define (1) texture rolled carbon steel (also referred to as “seat belt retractor steel”), (2) hardened and tempered strip steel, and (3) strapping steel, as separate domestic like products. I find, however, that any such minor variations in chemical or physical characteristics, or production processes, are insufficient to distinguish these three products from the continuum of cold-rolled steel products. Accordingly, I define a single domestic like product coterminous with the scope of these investigations.

## **II. DOMESTIC INDUSTRY AND RELATED PARTIES**

### **A. Domestic Industry**

The domestic industry is defined as “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”<sup>12</sup> In defining the domestic industry, the Commission’s general practice has been to include in the industry all domestic production of the domestic like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.<sup>13</sup> Based upon the foregoing like product definition, I define the domestic industry as all U.S. producers of certain cold-rolled steel products included within the scope of these investigations.

### **B. Related Parties**

I must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to section 771(4)(B) of the Act. That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or which are themselves importers.<sup>14</sup> Exclusion of such a producer is within the Commission’s discretion based upon the facts presented in each case.<sup>15</sup>

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<sup>10</sup> CR at I-22 to I-23; PR at I-19.

<sup>11</sup> Certain Cold-Rolled Steel Products from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, The Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela, Invs. Nos. 701-TA-422-425 and 731-TA-964-983 (Preliminary), USITC Pub. 3471 at 3-6 (November 2001) (“Preliminary Determination”).

<sup>12</sup> 19 U.S.C. § 1677(4)(A).

<sup>13</sup> See United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (Ct. Int’l Trade 1994), *aff’d*, 96 F.3d 1352 (Fed. Cir. 1996).

<sup>14</sup> 19 U.S.C. § 1677(4)(B).

<sup>15</sup> Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int’l Trade 1989), *aff’d without opinion*, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int’l Trade 1987). The

(continued...)

Although none of the parties has argued for the exclusion of a domestic producer as a related party, several related party issues are raised on the record in these investigations. First, based upon their respective foreign ownership interests, the question arises whether CSI, Ispat Inland, Theis, or UPI are related parties. Even if I were to treat these producers as related parties, I find that appropriate circumstances do not exist to exclude any of these four producers from the domestic industry. CSI did not provide information in these final phase investigations and thus the question of exclusion is rendered moot. With respect to Ispat Inland, Theis, and UPI, it does not appear that these three firms specially benefitted from any related party status, and with respect to Ispat Inland and UPI it appears that the primary interests of these two producers lie in domestic production. In addition, National Steel is a related party by virtue of being majority-owned by the Japanese producer NKK; however, I also find that appropriate circumstances do not exist to exclude National Steel from the domestic industry because it does not appear to have specially benefitted from its related party status and because National Steel appears primarily focused on domestic production.

Second, the question arises whether any domestic producer should be excluded as a related party on the basis of its purchases of subject imports. \*\*\* each purchased subject imports during the POI. However, \*\*\* each purchased \*\*\* amounts of subject imports, and \*\*\*. With respect to \*\*\*, its purchases of subject imports \*\*\*; moreover, \*\*\* does not appear to have specially benefitted from its purchases of subject imports and the firm appears primarily focused on domestic production. Accordingly, I find that appropriate circumstances do not exist to exclude \*\*\* from the domestic industry.

### III. NEGLIGIBLE IMPORTS

Because the scope definition (and in particular the list of excluded products) in these final phase investigations differs from the scope as defined in the preliminary phase, I revisit the issue of negligibility.

Imports from a subject country corresponding to a domestic like product that account for less than 3 percent of all such merchandise imported into the United States during the most recent 12 months for which data are available preceding the filing of the petition shall be deemed negligible.<sup>16</sup> The statute further provides that imports from a single country which comprise less than 3 percent of total imports of such merchandise may not be considered negligible if there are several countries subject to investigation

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<sup>15</sup> (...continued)

primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude the related parties include: (1) the percentage of domestic production attributable to the importing producer; (2) the reason the U.S. producer has decided to import the product subject to investigation, *i.e.*, whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and (3) the position of the related producers vis-a-vis the rest of the industry, *i.e.*, whether inclusion or exclusion of the related party will skew the data for the rest of the industry. *See, e.g., Torrington Co. v. United States*, 790 F. Supp. 1161, 1168 (Ct. Int'l Trade 1992), *aff'd without opinion*, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interests of the related producers lie in domestic production or in importation. *See, e.g., Melamine Institutional Dinnerware from China, Indonesia, and Taiwan*, Invs. Nos. 731-TA-741-743 (Final), USITC Pub. 3016 (Feb. 1997) at 14, n.81.

<sup>16</sup> 19 U.S.C. § 1677(24)(A)(i)(I). In this case data collected to measure negligibility are for the period from September 1, 2000 through August 31, 2001. *See* CR/PR at Table IV-3. All references in these dissenting views to the Confidential and Public Reports include the additions and corrections contained in Memorandum INV-Z-134 (August 21, 2002), Memorandum INV-Z-136 (August 21, 2002), and Memorandum INV-Z-139 (August 23, 2002).

with negligible imports and the sum of such imports from all those countries in the aggregate accounts for more than 7 percent of the volume of all such merchandise imported into the United States.<sup>17</sup> By operation of law, a finding of negligibility terminates the Commission's investigation(s) with respect to such imports.<sup>18</sup>

In the case of countervailing duty investigations involving developing countries, the statute further provides that the negligibility thresholds are 4 percent individually and 9 percent in the aggregate.<sup>19</sup> The statute defines a "developing country" as any country so designated by the U.S. Trade Representative.<sup>20</sup>

#### **A. The Antidumping Investigations**

Negligibility is an issue for 11 of the 20 subject countries because they fall below the 3 percent negligibility threshold: Australia (\*\*\*) percent of total imports during the relevant 12 month period); Germany (\*\*\*) percent); India (\*\*\*) percent); the Netherlands (\*\*\*) percent); New Zealand (\*\*\*) percent); Spain (\*\*\*) percent); Sweden (\*\*\*) percent); Taiwan (\*\*\*) percent); Thailand (\*\*\*) percent); Turkey (\*\*\*) percent); and Venezuela (\*\*\*) percent).<sup>21</sup> However, the combined import share of these 11 subject countries is 12.8 percent, thus exceeding the 7 percent aggregate negligibility threshold. Accordingly, subject imports from these 11 countries are not negligible for purposes of a present material injury analysis.

#### **B. The Countervailing Duty Investigations**

The petition included countervailing duty allegations against four countries: Argentina, Brazil, France, and Korea. Argentina and Brazil each have been designated a developing country by the U.S. Trade Representative.<sup>22</sup> Argentina accounted for \*\*\* percent of total imports during the relevant 12 month period, and Brazil accounted for \*\*\* percent; thus, Argentina and Brazil each exceed the applicable 4 percent negligibility threshold.<sup>23</sup> France accounted for \*\*\* percent of total imports and Korea accounted for \*\*\* percent; thus, France and Korea each exceed the applicable 3 percent negligibility threshold.<sup>24</sup> Accordingly, subject imports from these four countries are not negligible for purposes of a present material injury analysis.

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<sup>17</sup> 19 U.S.C. § 1677(24)(A)(ii).

<sup>18</sup> 19 U.S.C. § 1671b(a)(1); 19 U.S.C. § 1673b(a)(1).

<sup>19</sup> 19 U.S.C. § 1677(24)(B).

<sup>20</sup> 19 U.S.C. § 1677(36)(A).

<sup>21</sup> See CR/PR at Table IV-3. I note that I rely on official Commerce statistics as adjusted for microalloy steel products and excluded products based on data submitted in response to Commission questionnaires.

<sup>22</sup> 63 Fed. Reg. at 29,948 (June 2, 1998).

<sup>23</sup> See CR/PR at Table IV-3.

<sup>24</sup> See *id.*

## IV. CUMULATION

### A. General Framework

For purposes of evaluating the volume and price effects for a determination of material injury by reason of subject imports, Section 771(7)(G)(i) of the Act requires the Commission to cumulate subject imports from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with domestic like products in the United States market.<sup>25</sup> In assessing whether subject imports compete with each other and with the domestic like product,<sup>26</sup> the Commission has generally considered four factors, including:

- (1) the degree of fungibility among the subject imports from different countries and between subject imports and the domestic like product;
- (2) the presence of sales or offers to sell in the same geographical markets of subject imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and
- (4) whether the subject imports are simultaneously present in the market.<sup>27</sup>

While no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the subject imports compete with each other and with the domestic like product.<sup>28</sup> Only a “reasonable overlap of competition” is required.<sup>29</sup> None of the four statutory exceptions to cumulation are present in the instant investigations.<sup>30</sup>

### B. Analysis

In the Preliminary Determination, I joined a unanimous Commission in finding a reasonable overlap of competition among all subject imports and between all subject imports and the domestic like product; as a result, I also joined in cumulating imports from all 20 subject countries for purposes of my injury analysis.<sup>31</sup> Upon review, I find that the record in these final phase investigations continues to support a cumulative analysis of material injury.

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<sup>25</sup> 19 U.S.C. § 1677(7)(G)(i).

<sup>26</sup> The Uruguay Round Agreements Act, Statement of Administrative Action (“SAA”), H.R. Doc. No. 103-316, Vol. 1 at 178 (1994), states that “the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition” (*citing Fundicao Tupy, S.A. v. United States*, 678 F. Supp. 898, 902 (Ct. Int’l Trade 1988), *aff’d*, 859 F.2d 915 (Fed. Cir. 1988)).

<sup>27</sup> See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Inv. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), *aff’d*, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int’l Trade 1988), *aff’d*, 859 F.2d 915 (Fed. Cir. 1988).

<sup>28</sup> See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct’ Int’l Trade 1989).

<sup>29</sup> SAA at 178.

<sup>30</sup> See 19 U.S.C. § 1677(7)(G)(ii).

<sup>31</sup> Preliminary Determination, USITC Pub. 3471 at 9-13.

*Fungibility.* Between January 1999 and March 2002, about 72.7 percent of imports from the subject countries entered the United States under just two of the enumerated HTS classification numbers for certain cold-rolled steel products.<sup>32</sup> More specifically, a majority of imports from 17 of the 20 subject countries falls under these two HTS statistical reporting numbers; with respect to the remaining three countries, about 40 percent of subject imports from Australia, 45 percent of subject imports from Japan, and 24 percent of subject imports from Sweden, were entered under these two HTS statistical reporting numbers.<sup>33</sup>

In addition, imports from each of the 20 subject countries were considered “always” interchangeable with the domestic like product by a vast majority of U.S. producers, and with the exception of subject imports from Russia, at least half of the U.S. importers reported that imports from each of the 19 other subject countries were either “always” or “frequently” interchangeable with the domestic product.<sup>34</sup> Similarly, a vast majority of U.S. producers indicated there were “never” any differences in product characteristics or sales conditions between imports from each of the 20 subject countries and the domestic like product, while in the aggregate, fully half of the U.S. importers reported that there were only “sometimes” or “never” any differences in product characteristics or sales conditions between imports and the domestic like product.<sup>35</sup>

Finally, a majority of reporting U.S. purchasers of cold-rolled steel indicated that they “always” or “usually” purchased the least expensive product available on the market,<sup>36</sup> and at least half of the responding purchasers indicated that they used domestically produced cold-rolled steel in the same applications as imports purchased from 15 of the subject countries.<sup>37</sup>

*Geographic Overlap.* Domestically produced cold-rolled steel products are shipped nationwide.<sup>38</sup> Subject imports have a similar presence in the United States market; specifically, imports from 15 of the subject countries entered all four regions of the U.S. market, while imports from 4 other

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<sup>32</sup> CR at IV-13; PR at IV-9. The two HTS statistical reporting numbers referred to are 7209.16.0090 and 7209.17.0090.

<sup>33</sup> See CR/PR at Table IV-4.

<sup>34</sup> CR/PR at Table II-6. In the case of subject imports from Russia, 7 U.S. importers found them to be “always” or “frequently” interchangeable with the domestic like product, while 8 U.S. importers found them to be “sometimes” interchangeable and 1 U.S. importer found them “never” interchangeable. See *id.*

<sup>35</sup> CR/PR at Table II-7. At least half of the U.S. importers reported that there were only “sometimes” or “never” any differences in product characteristics or sales conditions between subject imports from Brazil, China, India, Korea, New Zealand, Russia, South Africa, Spain, Taiwan, Thailand, Turkey, and Venezuela, on the one hand, and the domestic like product on the other; however, a majority of responding U.S. importers reported that there were “always” or “frequently” differences in production characteristics or sales conditions between subject imports from Argentina, Australia, Belgium, France, Germany, Japan, The Netherlands, and Sweden, on the one hand, and the domestic like product on the other. See *id.*

<sup>36</sup> Ten of 96 responding purchasers reported that they “always” bought the least expensive product available on the market, and 43 firms reported that they “usually” bought the least expensive product. CR at II-9, PR at II-6.

<sup>37</sup> A majority of responding purchasers indicated that they did not use domestically produced cold-rolled steel in the same applications as subject imports from New Zealand, Russia, Spain, Thailand, and Venezuela. See CR/PR at Table II-3.

<sup>38</sup> CR at IV-13, PR at IV-13.

subject countries entered three out of the four regions during the POI.<sup>39</sup> Imports from the remaining subject country, *i.e.* New Zealand, entered exclusively in the West region.<sup>40</sup>

*Channels of Distribution.* A substantial share of domestically-produced cold-rolled steel is not sold on the open market but is used internally or transferred to related firms for the production of downstream products;<sup>41</sup> of open market sales during 2001, almost two-thirds was sold to end users with the remainder sold to distributors.<sup>42</sup> Imports from 15 of the subject countries were also sold to both end users and distributors during 2001, while subject imports from \*\*\* were sold exclusively to end users and subject imports from \*\*\* were sold exclusively to distributors.<sup>43</sup>

*Simultaneous Presence.* Domestically produced cold-rolled steel products were present in the U.S. market throughout the POI, while imports from 13 of the subject countries each entered the United States during nearly all of the 39 months for which data were collected.<sup>44</sup> For six of the seven remaining countries, subject imports entered the United States in at least half of the 39 months, while in the case of Thailand subject imports entered the United States in 19 out of 39 months (*i.e.* 48.7 percent of the POI).<sup>45</sup>

*Conclusion.* I note that various respondents argue against cumulating subject imports from Australia, the Netherlands, New Zealand, and Spain, based upon allegations of limited fungibility, geographic overlap, channels of distribution, and presence in the U.S. market; in addition, the Russian respondent argues against cumulation because imports from Russia are capped under the Comprehensive Steel Agreement entered into between Russia and the United States.<sup>46</sup>

Just as the domestic like product is comprised of a continuum of broadly similar products that may have different specifications, production processes, and end-uses, so too are subject imports comprised of a range of different types of cold-rolled steel; thus, it is not unexpected to find that not all types of cold-rolled steel are currently imported from each of the 20 subject countries. Nevertheless, the concentration of subject imports entered under just two HTS statistical reporting numbers is indicative of the commonality among subject imports. In addition, the degree of interchangeability reported between the domestic product and subject imports, the degree of similarity in product characteristics and sales conditions reported for both the domestic product and subject imports, and the degree of similarity in

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<sup>39</sup> See CR/PR at Table IV-5. The four regions of the U.S. market are the East, Gulf, Great Lakes, and West regions.

<sup>40</sup> See *id.*

<sup>41</sup> See CR at III-18, PR at III-12.

<sup>42</sup> See CR/PR at Table III-7.

<sup>43</sup> See *id.*

<sup>44</sup> See CR/PR at IV-18.

<sup>45</sup> See CR/PR at Table IV-6.

<sup>46</sup> Exports of cold-rolled steel produced in Russia to the United States during the POI were limited under The Comprehensive Steel Agreement entered into between the Ministry of Trade of the Russian Federation and the U.S. Department of Commerce on July 12, 1999. CR at VII-29 n.46, PR at VII-9 n.46. In my view, the existence of a quantitative restriction on subject imports does not, in and of itself, demonstrate the absence of a reasonable overlap of competition for those subject imports that do enter the U.S. market; instead, imports that are subject to a quantitative restriction must be evaluated under the Commission's traditional four-factor test in the same manner as all other subject imports. See Honey from Argentina and China, Invs. Nos. 701-TA-402 and 731-TA-892-893 (Final), USITC Pub. 3470 at 15 n.96 (November 2001).

end-uses reported for both the domestic product and subject imports,<sup>47</sup> are all indicative of the commonality between subject imports and the domestic like product. I am therefore satisfied that subject imports are largely fungible for each other and for the domestic like product.

In general, imports from each of the 20 subject countries were sold throughout the U.S. market, were sold through the same channels of distribution as U.S. commercial shipments, and were present in the U.S. market for a majority of the POI; although there are some limited exceptions to these observations, I find that, on balance, no pattern of such exceptions exists on the record for any subject country which would warrant a finding that imports from a subject country do not compete with other subject imports or with the domestic like product.<sup>48</sup>

Based upon all the foregoing, I find that there exists a reasonable overlap of competition among all subject imports, and between all subject imports and the domestic like product, in the U.S. market for cold-rolled steel. Accordingly, I engage in a cumulative analysis of imports from all 20 subject countries for purposes of analyzing material injury to the domestic cold-rolled steel industry.

## V. CONDITIONS OF COMPETITION

### A. Captive Production

Section 771(7)(C)(iv) of the Act provides that if domestic producers internally transfer significant production of the domestic like product for the production of a downstream article and also sell significant production of the domestic like product in the merchant market, and if three additional conditions (or “prongs”) are satisfied on the record, then the Commission shall focus its analysis of market share and the factors affecting financial performance primarily on the merchant market.<sup>49</sup> During 2001, captive consumption accounted for 48 percent of the reported volume of domestic producers’ U.S. shipments of cold-rolled steel, while roughly 15 percent was transferred to related firms and the remaining 37 percent was sold in the merchant market;<sup>50</sup> accordingly, I find that the threshold criterion of the captive production provision is satisfied.<sup>51</sup>

In previous investigations I have outlined my analytical framework for examining the captive production provision, in which I examine whether the type or category of domestic like product that is internally transferred also enters the merchant market (with respect to the first prong of the provision), and whether the type or category of downstream article produced from internal transfers of the domestic

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<sup>47</sup> The degree of similarity in end-uses is particularly important in establishing the price-based focus of competition in the U.S. market for cold-rolled steel, given that a majority of U.S. purchasers reported that they “always” or “usually” purchase the least expensive product available on the market.

<sup>48</sup> I note that imports from Australia were comprised almost exclusively of full hard steel and were sold to two end-user customers in the West region of the U.S. market. I also note, however, that there are two U.S. producers of full hard steel in the West region competing for sales, and full hard steel imports from Korea and the Netherlands also entered the West region of the U.S. market; in addition, subject imports from Australia, Korea, and the Netherlands, each maintained an almost constant presence in the U.S. market over the POI; *see also infra* n.126.

<sup>49</sup> 19 U.S.C. § 1677(7)(C)(iv).

<sup>50</sup> CR at III-18, PR at III-12.

<sup>51</sup> I need not determine the extent to which transfers to related firms are either captive production or merchant market sales because even if such transfers are excluded from consideration, I find that significant production of the domestic like product is internally transferred and that significant production of the domestic like product is sold in the merchant market.

like product is also produced from merchant market sales of the domestic like product (with respect to the third prong of the provision).<sup>52</sup>

Upon review, I find that the third prong of the captive production provision is not satisfied in these investigations. With respect to U.S. producers' internal transfers of cold-rolled steel, about 72 percent was used to produce coated (galvanized) products in 2001, and with respect to U.S. producers' commercial shipments of cold-rolled steel, about 62 percent was used to produce coated (galvanized) products in 2001.<sup>53</sup> Consequently, I find that both internal transfers and merchant market sales of cold-rolled steel by the domestic industry are "generally used in the production" of the same downstream article and therefore the captive production provision is inapplicable in these investigations.<sup>54</sup>

However, even in circumstances where the captive production provision does not apply, the Commission has exercised its discretion to consider captive production as a relevant condition of competition. I do so in these investigations. As set forth below, I examine both data for the industry as a whole as well as merchant market data, and I find that they are consistent in establishing material injury to the domestic industry by reason of subject imports; the record thus demonstrates that the domestic industry was not insulated from injury by virtue of internal transfers of significant production of the domestic like product.

## **B. Other Conditions of Competition**

There are a number of conditions of competition pertinent to the analysis of material injury, foremost of which is the fact that U.S. purchasers of cold-rolled steel are sophisticated and experienced participants in a fluid global market for steel products;<sup>55</sup> this fact impacts competition in the U.S. market in two ways.

First, U.S. purchasers of cold-rolled steel have demonstrated the evident ease and speed with which they respond to price differentials that are efficiently communicated in the market by shifting among alternative sources of supply.<sup>56</sup> The record contains a striking example of this behavior in that 10 of the countries subject to the instant investigations were also subject to the Commission's 1999-2000 investigations of cold-rolled steel imports.<sup>57</sup> Between October and December 1999, Commerce issued

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<sup>52</sup> See Certain Hot-Rolled Steel Products from Japan, Views of Chairman Lynn M. Bragg, Commissioner Carol T. Crawford, and Commissioner Thelma J. Askey Regarding the Captive Production Provision, Inv. No. 731-TA-807 (Final), USITC Pub. 3202 at 25-30 (June 1999).

<sup>53</sup> CR/PR at Table III-8. Between 1999 and the first quarter of 2002, galvanizers and tin platers accounted for roughly 40 percent of reported purchases of the domestic like product. CR at II-2, PR at II-1.

<sup>54</sup> This is consistent with my examination of the captive production provision in the 1999-2000 investigations of cold-rolled steel imports. See Certain Cold-Rolled Steel Products from Argentina, Brazil, Japan, Russia, South Africa, and Thailand, Dissenting Views of Chairman Lynn M. Bragg, Invs. Nos. 701-TA-393 and 731-TA-829-830, 833-834, 836, and 838 (Final), USITC Pub. 3283 at 31 (March 2000).

<sup>55</sup> See, e.g., \*\*\*. CR/PR at V-18; see also Hearing Transcript ("Tr.") at 75-76 (Mr. Mull) (largest U.S. purchaser has access and knowledge of all sources of cold-rolled steel globally).

<sup>56</sup> See *supra* n.47. Indeed, the fact that 20 countries are subject to the instant investigations is indicative of the numerous alternative sources of supply for cold-rolled steel.

<sup>57</sup> See Certain Cold-Rolled Steel Products from Argentina, Brazil, China, Indonesia, Japan, Russia, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela, Invs. Nos. 701-TA-393-396 and 731-TA-829-840 (Preliminary), USITC Pub. 3214 (July 1999); Certain Cold-Rolled Steel Products from Argentina, Brazil, Japan,

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affirmative preliminary determinations on imports subject to those previous investigations, thereby obligating importers to deposit provisional antidumping and/or countervailing duties (or to post bond).<sup>58</sup> The Commission issued the first of three negative final determinations on March 3, 2000, and as a result the provisional obligations were subsequently lifted;<sup>59</sup> importantly, market participants became aware of the cumulative basis for the Commission's negative determination after March 13, 2000, when the Commission's Views were transmitted to Commerce.<sup>60</sup> Notably, although both total apparent U.S. consumption and apparent U.S. consumption in the merchant market remained at roughly the same levels in 1999 and 2000,<sup>61</sup> the volume of subject imports declined sharply in response to the imposition of provisional duties and then surged once provisional duties were lifted;<sup>62</sup> this clearly demonstrates the responsiveness of U.S. purchasers to price differentials in the market as they shifted roughly constant levels of consumption among alternative sources of supply, as do corresponding changes in the volume of non-subject imports.<sup>63</sup>

A second impact of the sophistication and experience of U.S. purchasers participating in a fluid global steel market is that U.S. purchasers may leverage the ready availability of low-priced imports to exert pricing pressure on the domestic industry; this latter point is elaborated upon below in section VI.B of these dissenting views. Additional pertinent conditions of competition include the following:

*Demand.* Demand for cold-rolled steel depends on the level of demand in the appliance, automotive, construction, container, and other industries in which it is used.<sup>64</sup> With respect to overall demand conditions in the U.S. market over the POI, I note that total apparent U.S. consumption declined by 0.6 percent between 1999 and 2000, and by a further 10.0 percent between 2000 and 2001; interim

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<sup>57</sup> (...continued)

Russia, South Africa, and Thailand, Invs. Nos. 701-TA-393 and 731-TA-829-830, 833-834, 836, and 838 (Final), USITC Pub. 3283 at 31 (March 2000); Certain Cold-Rolled Steel Products from Turkey and Venezuela, Invs. Nos. 731-TA-839-840 (Final), USITC Pub. 3297 (May 2000); Certain Cold-Rolled Steel Products from China, Indonesia, Slovakia, and Taiwan, Invs. Nos. 731-TA-831-832, 835, and 837 (Final), USITC Pub. 3320 (July 2000). Of the 12 countries subject to those previous investigations, only Indonesia and Slovakia are not subject to the instant investigations.

<sup>58</sup> USITC Pub. 3283 (March 2000) at I-3 to I-4.

<sup>59</sup> USITC Pub. 3283 at 1 (Determinations). I note that I rendered affirmative determinations of present material injury in each of those investigations. *See id.* at 29-40, *Dissenting Views of Chairman Lynn M. Bragg*.

<sup>60</sup> USITC Pub. 3283 at I-4.

<sup>61</sup> *See* CR/PR at Tables C-1 and C-2.

<sup>62</sup> Commission staff compiled monthly import volume data for the 10 countries subject to the previous investigations that cover the 34 HTS statistical reporting numbers that are identified at I-19 & n.32 in the Confidential Report and at I-16-17 & n.32 in the Public Report. These data indicate that imports of cold-rolled steel products from the 10 subject countries declined by over 79 percent in volume between the third and fourth quarters of 1999 (reflecting the lagged impact of the pendency of the investigations and the corresponding shift by U.S. purchasers to alternative sources of supply), and then declined by an additional 53 percent in the first quarter of 2000 (reflecting the full impact of provisional duties and the continuing shift by U.S. purchasers to alternative sources of supply); subject import volume more than doubled in the second quarter of 2000, largely as the result of a more than fourfold increase in monthly import volume in June 2000 (which reflects the lag associated with the arrival of imports in the U.S. market for orders placed following the Commission's negative determination in March 2000). *See* Table "CR Steel (34)" (compiled by staff).

<sup>63</sup> *See* CR/PR at Tables IV-2 and J-1; *see also* Tr. at 78 (Mr. Szymanski) (within one business day of Commission's negative vote in March 2000, customers of U.S. Steel were receiving low-priced offers on subject imports).

<sup>64</sup> CR at II-6, PR at II-4.

comparisons indicate a 5.2 percent decline in total apparent U.S. consumption between the first quarter of 2001 and the first quarter of 2002, and a 9.5 percent increase between the second quarter of 2001 and the second quarter of 2002.<sup>65</sup> The U.S. merchant market evidences generally similar trends, with apparent consumption increasing by 1.1 percent between 1999 and 2000, before declining by 13.0 percent between 2000 and 2001; interim comparisons indicate a 10.0 percent decline in apparent U.S. merchant market consumption between the first quarter of 2001 and the first quarter of 2002, as well as a 1.8 percent decline between the second quarter of 2001 and the second quarter of 2002.<sup>66</sup>

Both sets of data indicate relatively flat demand between 1999 and 2000 followed by a sharp drop in demand in 2001 that extended into the first quarter of 2002; only the most recent interim data differ, with total market data indicating an increase in demand in the second quarter of 2002 due to increased internal consumption, in contrast to the merchant market data that indicate slightly declining demand in the second quarter of 2002.

*Non-Subject Imports.* The volume of non-subject imports constituted 21.7 percent of total imports in 1999, increasing to 34.7 percent in 2000 and declining to 15.9 percent in 2001 as subject import volume surged between 2000 and 2001; during the first quarter of 2002 non-subject imports accounted for 21.9 percent of total imports, before increasing to over 77 percent in the second quarter of 2002 as U.S. purchasers shifted to alternative sources of supply in response to the pending investigations and provisional duties associated with the 20 subject countries.<sup>67</sup>

*Interchangeability.* The record indicates that domestically produced and imported cold-rolled steel products are broadly interchangeable<sup>68</sup> and that as a result, competition is largely on the basis of price<sup>69</sup> (although non-price factors such as quality and availability are also important and may limit interchangeability in particular instances).<sup>70</sup>

*Pricing Levels.* Importantly, both total market data and open (“merchant”) market data are consistent in identifying pricing levels as the predominant source of injury to the domestic industry, not declining demand. Specifically, although total apparent U.S. consumption declined by 10.0 percent in volume between 2000 and 2001 (and U.S. shipments by the domestic industry declined by a comparable 11.8 percent in volume), the value of total consumption declined by over 22 percent; between the first quarter of 2001 and the first quarter of 2002, although the volume of total apparent U.S. consumption declined by 5.2 percent (and U.S. shipments by the domestic industry declined by a comparable 4.5 percent in volume), the value of total consumption declined by 10.0 percent.<sup>71</sup> Similarly, although apparent U.S. open market consumption declined by 13.0 percent in volume between 2000 and 2001 (and

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<sup>65</sup> CR/PR at Tables C-1 and J-1. On a semiannual basis, total apparent U.S. consumption increased by 7.2 percent between the first half of 2001 and the first half of 2002. CR/PR at Table J-1.

<sup>66</sup> CR/PR at Tables C-2 and J-2. The merchant market data do not include U.S. producers’ transfers to related firms.

<sup>67</sup> See CR/PR at Tables IV-2 and J-1.

<sup>68</sup> For example, at least half of responding purchasers reported that they used domestically produced cold-rolled steel in the same applications as subject imports from 15 of the 20 countries subject to these investigations. See CR/PR at Table II-3.

<sup>69</sup> For example, a majority of responding purchasers reported that they “always” or “usually” bought the least expensive product available on the market. CR at II-9, PR at II-6.

<sup>70</sup> See CR/PR at Table II-2.

<sup>71</sup> CR/PR at Table C-1.

open market shipments by the domestic industry declined by 18.2 percent in volume reflecting both declining demand and increasing market share captured by subject imports), the value of open market consumption declined by 24.5 percent; between the first quarter of 2001 and the first quarter of 2002, although the volume of apparent U.S. open market consumption declined by 10.0 percent (and open market shipments by the domestic industry declined by a comparable 9.1 percent in volume), the value of open market consumption declined by 16.6 percent.<sup>72</sup>

The foregoing data demonstrate that although declines in U.S. shipments by the domestic industry largely tracked declining demand from the beginning of 2000 through the first quarter of 2002, declines in both were significantly outpaced by the declining value of consumption in the U.S. market; the question thus becomes what led to the low and declining price levels that prevailed over this period. Indeed, even the most recent data on the record indicate that prices remain well below the levels evidenced in 1999 and 2000 and continue to be insufficient to return the domestic industry to profitability.<sup>73</sup> I address this question of causation below in section VI.B of these dissenting views.

*Pricing Practices.* A majority of both U.S. producers and importers each reported transaction-by-transaction negotiations in arriving at price so as to provide competitive pricing that meets market conditions, although contract pricing was also reported as a common means of arriving at a price term.<sup>74</sup> Both U.S. producers and importers sold most of their product on contract; on average, U.S. producers sold 55 percent of their product on contract and 45 percent on the spot market, while importers sold 52 percent of their product on contract and 48 percent on the spot market.<sup>75</sup> Prices and quantities are usually fixed in the contracts, although about 20 percent of responding U.S. producers and importers indicated that the contracts incorporated meet-or-release provisions.<sup>76</sup> A number of domestic industry representatives testified that U.S. producers were pressured to renegotiate contract price terms at customers' requests in order to match declining spot prices in the U.S. market;<sup>77</sup> thus, to the extent that contracts contain meet-or-release provisions and to the extent that price terms are renegotiated, contracts do not insulate U.S. producers from declining price levels in the market. In addition, a number of long-term contracts negotiated by U.S. producers during the latter half of 2001 incorporated price terms that reflected 20-year lows for the industry,<sup>78</sup> as U.S. producers confronted the strategic choice between meeting low-priced import competition or sacrificing sales.<sup>79</sup>

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<sup>72</sup> CR/PR at Table C-2.

<sup>73</sup> See CR/PR at Tables H-1, H-2, H-3, H-4. Even in the second quarter of 2002, the ratio of COGS to sales exceeded 100 percent. CR/PR at Tables J-1 and J-2. See also CR/PR at Tables C-1, C-2, J-1, and J-2 (although the probative value of average unit value data may be limited due to differences in product mix across sources and changes in product mix over time, these data are corroborative in that the average unit values of both total U.S. shipments and open market shipments by the domestic industry remain well below the levels evidenced in 1999 and 2000).

<sup>74</sup> CR at V-2 to V-3, PR at V-2.

<sup>75</sup> CR at V-3, PR at V-2.

<sup>76</sup> See *id.*

<sup>77</sup> Tr. at 64 (Mr. DiMicco); Tr. at 73 (Mr. Walker); Tr. at 84 (Mr. Marchak). Over one half of U.S. producers reported that prices sometimes vary during a contract, while 25 percent of U.S. purchasers reported the same; in contrast, only 1 out of 26 U.S. importers reported that prices vary during a contract. CR at V-3, PR at V-2-3.

<sup>78</sup> Tr. at 75 (Mr. Mull). Long-term contracts generally last from one to two years; see, e.g., Tr. at 64 (Mr. DiMicco).

<sup>79</sup> Tr. at 61 (Mr. DiMicco); Tr. at 72 (Mr. Walker); see also Tr. at 90-91 (Mr. Berra).

*Channels of Distribution.* Roughly 63 percent of the domestic industry's commercial shipments in the U.S. open market were to end users in 2001, with the remaining 37 percent sold to distributors; in contrast, roughly 25 percent of imports from the 20 subject countries were sold to end users in 2001, with the remaining 75 percent sold to distributors.<sup>80</sup>

*Lead Times.* Responding U.S. producers reported that their average lead time (between a customer's order and the date of delivery) for cold-rolled steel was 48 days; in contrast, U.S. importers' average lead time was 102 days.<sup>81</sup>

*Domestic Capacity and Production.* The domestic industry's capacity increased by 3.7 percent between 1999 and 2000, before declining by 2.4 percent between 2000 and 2001; compared to the first quarter of 2001, U.S. capacity declined by 11.2 percent in the first quarter of 2002, and compared to the second quarter of 2001, U.S. capacity declined by 3.9 percent in the second quarter of 2002.<sup>82</sup> Total production by the domestic industry remained roughly constant between 1999 and 2000, before declining by almost 12 percent between 2000 and 2001; compared to the first quarter of 2001, total domestic production declined by 2.5 percent in the first quarter of 2002, and compared to the second quarter of 2001, U.S. production increased by 17.5 percent in the second quarter of 2002.<sup>83</sup> As a result of the foregoing, capacity utilization for the domestic industry declined from 85.8 percent in 1999 to 83.1 percent in 2000, and then to 75.1 percent in 2001; in the first quarter of 2002 the domestic industry's capacity utilization stood at 80.2 percent and in the second quarter of 2002 this increased to 89.9 percent.<sup>84</sup> End-of-period inventories stood at roughly 5 percent of domestic production throughout the POI, and the ratios of end-of-period inventories to U.S. production and to U.S. shipments remained largely the same or declined over the POI.<sup>85</sup>

*Composition of the Domestic Industry.* The Commission collected data from 23 U.S. producers of cold-rolled steel believed to represent over 95 percent of known U.S. production during 1999-2001; these include both basic oxygen furnace mills and electric arc furnace mills, as well as \*\*\*.<sup>86</sup> Since January 1999, two U.S. producers (*i.e.* Acme Steel and Gulf States Steel) ceased operations; three firms (*i.e.* Bethlehem, National, and Wheeling) are operating under Chapter 11 of the U.S. Bankruptcy Code; and two firms (*i.e.* Heartland Steel and LTV) had their operating assets purchased by new owners (in the case of Heartland Steel production operations resumed in July 2001, and in the case of LTV production operations resumed in May 2002).<sup>87</sup> In addition, on August 16, 2002, Cold Metal announced its intention to file for Chapter 11 bankruptcy protection and close its Indianapolis and Youngstown plants.<sup>88</sup>

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<sup>80</sup> CR/PR at Table III-7.

<sup>81</sup> CR at II-10; PR at II-6.

<sup>82</sup> CR/PR at Tables III-2 and J-1. Most of the decline in capacity between the first quarter interim periods is attributable to the closure of LTV in December 2001. CR at III-9 n.14, PR at III-5 n.14.

<sup>83</sup> *See id.*

<sup>84</sup> *See id.*

<sup>85</sup> *See* CR/PR at Tables III-13 and J-1. I note that flat or declining inventory levels are indicative of the domestic industry's choice to meet import competition on the basis of price.

<sup>86</sup> CR/PR at III-1 & Table III-1.

<sup>87</sup> CR at III-4 & nn. 9-10; PR at III-4 & nn. 9-10.

<sup>88</sup> CR at III-4, PR at III-4.

*Production Costs.* The main input in cold-rolled steel is hot-rolled steel; the average unit price of hot-rolled steel increased generally from 1999 to 2000 before declining sharply during 2000, and then leveling off through the remainder of 2001 before increasing sharply in 2002.<sup>89</sup> In contrast to these price movements, the average unit cost of goods sold for U.S. producers increased steadily from 1999 through 2001, before declining somewhat in the first quarter of 2002 and remaining stable in the second quarter of 2002.<sup>90</sup>

*Additional Duties.* As noted, in June 1999 the Commission and Commerce instituted antidumping and/or countervailing duty investigations against 12 countries, 10 of which are subject to the instant investigations.<sup>91</sup> Those prior investigations led to the imposition of provisional duties from October through December 1999; however, the provisional duties were lifted by Commerce following a series of three negative injury determinations rendered by the Commission in March, May, and July 2000.<sup>92</sup>

In addition, antidumping and/or countervailing duty orders were in place with respect to imports from Germany, Korea, the Netherlands, and Sweden, during 1999 and throughout most of 2000.<sup>93</sup> Those orders were subject to a grouped sunset review, in which the Commission rendered negative determinations in November 2000.<sup>94</sup> Commerce revoked those orders in December 2000.<sup>95</sup>

Finally, I note that the instant petitions were filed on September 28, 2001, and that in the preliminary phase the Commission voted to continue these investigations on November 13, 2001; this determination was published on November 19, 2001.<sup>96</sup> Commerce published its preliminary affirmative countervailing duty determinations on March 4, 2002 and its preliminary antidumping duty determinations on May 9, 2002, thereby triggering the imposition of provisional countervailing and antidumping duties, respectively (or the posting of bond).<sup>97</sup>

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<sup>89</sup> CR/PR at V-1.

<sup>90</sup> See CR/PR at Tables C-1, C-2, J-1, and J-2.

<sup>91</sup> Preliminary Determination, USITC Pub. 3471 at 16-17.

<sup>92</sup> 65 Fed. Reg. 15,008 (March 20, 2000) (Argentina, Brazil, Japan, Russia, South Africa, and Thailand); 65 Fed. Reg. 31,348 (May 17, 2000) (Turkey and Venezuela); 65 Fed. Reg. 44,076 (July 17, 2000) (China, Indonesia, Slovakia, and Taiwan). I again note that I rendered affirmative determinations of present material injury in each of those investigations. See USITC Pub. 3283 at 29-40; USITC Pub. 3297 at 13-14; USITC Pub. 3320 at 13-14.

<sup>93</sup> Preliminary Determination, USITC Pub. 3471 at 17. The orders with respect to Sweden had been in place since 1985, and the orders with respect to Germany, Korea, and the Netherlands had been in place since 1993.

<sup>94</sup> Certain Carbon Steel Products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, The Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom, Invs. Nos. AA1921-197 (Review), 701-TA-231, 319-320, 322, 325-328, 340, 342, and 348-350 (Review), and 731-TA-573-576, 578, 582-587, 604, 607-608, 612, and 614-618 (Review), USITC Pub. 3364 (November 2000). I note that I rendered affirmative review determinations with respect to the orders covering imports of cold-rolled steel from Germany, Korea, and the Netherlands (each of which is also subject to the instant investigations), and a negative determination with respect to the countervailing duty order on Sweden (which is also subject to the instant investigations); in addition, I note that I found the domestic cold-rolled steel industry to be in a vulnerable condition. See *Separate and Dissenting Views of Commissioner Lynn M. Bragg*, USITC Pub. 3364 at 67, 78-86.

<sup>95</sup> 65 Fed. Reg. 78,467 (December 15, 2000) (notice of revocation).

<sup>96</sup> CR/PR at I-2; 66 Fed. Reg. 57,985 (November 19, 2001).

<sup>97</sup> CR/PR at I-2 and Tables I-6 & I-8.

As a result of all the foregoing, the sole period in the U.S. market free of outstanding orders or provisional duties equates generally with the first quarter of 2001 through the first quarter of 2002.

### C. The 201 Safeguard Relief

On March 5, 2002, the President issued a proclamation imposing temporary steel safeguard duties ranging from 8 percent to 30 percent depending on product category for a period not to exceed three years and a day;<sup>98</sup> with respect to imports of cold-rolled steel, the safeguard relief imposes an additional 30 percent *ad valorem* tariff during the first year of the relief period, declining to 24 percent in the second year and to 18 percent in the third year.<sup>99</sup> Six of the countries subject to the instant investigations are not subject to the additional safeguard duties because they are classified as developing countries; these include Argentina, India, South Africa, Thailand, and Turkey (although the President further stated that the exclusionary status for developing countries would be revoked, in whole or in part, if a surge in imports from exempted countries were to undermine the effectiveness of the safeguard measures).<sup>100</sup> In addition, the President has published several lists of products (including certain cold-rolled steel products) that are specifically excluded from the safeguard relief.<sup>101</sup>

Although some may conclude otherwise, in my view the existence of the 201 safeguard relief is not relevant to the analysis of material injury in these investigations, except to the extent that such relief masks the injurious presence of subject imports in the U.S. market. I base this view on a plain reading of the Title VII of the Act together with the Trade Act of 1974, as well as the very different nature and purpose of antidumping and countervailing duties imposed under Title VII of the Act versus duties imposed as global safeguard relief under section 201 of the Trade Act of 1974.

The Statement of Administrative Action accompanying the Uruguay Round Agreements Act states that in determining what action to recommend to the President in a safeguard investigation, the Commission shall take into account any relief provided under other provisions of law, such as preexisting antidumping or countervailing duties.<sup>102</sup> In contrast, neither Title VII nor its legislative history expressly instructs the Commission to take into account any relief provided under other provisions of law when conducting a material injury analysis. I believe that the omission of such instruction in Title VII is purposeful<sup>103</sup> and indicates a legislative intent that the Commission conduct an injury analysis of unfair imports without regard to any preexisting safeguard duty; in my view, if affirmative determinations are otherwise warranted on the record before the Commission, the process intended under the statute would be for the President to evaluate whether any modification(s) to the preexisting safeguard remedy are warranted following the imposition of antidumping and/or countervailing duties.<sup>104</sup>

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<sup>98</sup> Presidential Proclamation 7529 of March 5, 2002 (67 Fed. Reg. 10,553 (March 7, 2002)).

<sup>99</sup> See CR/PR at Table I-3.

<sup>100</sup> See CR at I-7 n.14, PR at I-6 n.14; *see also* 67 Fed. Reg. 47,338 (July 18, 2002).

<sup>101</sup> See Annex to Proclamation 7529, 67 Fed. Reg. 10,558 (March 7, 2002); 67 Fed. Reg. 16,484 (April 5, 2002); 67 Fed. Reg. 46,221 (July 12, 2002); *see also* List of Additional Products to be Excluded from the Section 201 Safeguard Measures, Office of the United States Trade Representative (August 22, 2002).

<sup>102</sup> SAA at 294.

<sup>103</sup> See, e.g., 2A Norman J. Singer, *Statutes and Statutory Construction* § 46:06 at 192 (6<sup>th</sup> ed. 2000) (“While every word of a statute must be presumed to have been used for a purpose, it is also the case that every word excluded from a statute must be presumed to have been excluded for a purpose.”).

<sup>104</sup> See 19 U.S.C. § 2254(b).

I believe that this reading of the statutes is most fully consistent with the very different purposes of duties imposed under Title VII, on the one hand, and global safeguard relief, on the other. Antidumping and countervailing duties are remedial and are imposed only to the extent required to negate the unfair pricing of injurious subject imports in the U.S. market. In contrast, a safeguard investigation focuses upon the role of imports in preventing needed restructuring of productive resources in the domestic industry, without regard to whether imports are fairly or unfairly traded;<sup>105</sup> thus, it is not unexpected to find that Title VII does not incorporate reciprocal considerations of preexisting relief, as a safeguard remedy is directed to the broader concern of facilitating efforts by the domestic industry to make a positive adjustment to import competition.<sup>106</sup>

An example of the foregoing distinction is readily evident in these investigations. Although I do not ordinarily consider the magnitude of the margin of dumping to be of particular significance in evaluating the effects of subject imports domestic producers,<sup>107</sup> in this case I note that Commerce's final LTFV margins for India, Japan, Sweden, and Thailand, ranged from 40.54 percent to 153.65 percent, while preliminary LTFV margins for Argentina, Brazil, China, Russia, South Africa, Spain, and Venezuela, ranged from 43.32 percent to 129.85 percent.<sup>108</sup> These margins substantially exceed the 30 percent *ad valorem* tariff imposed during the first year of the safeguard relief period. The failure to fully redress the injurious unfair trade practices evident in these investigations with antidumping and countervailing duties of comparable magnitude can only serve to undermine the ability of the domestic industry to restructure and thereby help perpetuate the condition of the industry that led to the need for 201 relief in the first place.<sup>109</sup>

In any event, even if the impact of the 201 relief is taken into account, the most recent data available on the record in these investigations indicate that the domestic cold-rolled steel industry has yet to achieve profitability and that subject imports are, and continue to be, a cause of material injury to the domestic industry. I turn now to my discussion of causation.

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<sup>105</sup> See, e.g., Steel, Inv. No. TA-201-73, USITC Pub. 3479 (Volume I), *Separate Views on Injury of Commissioner Lynn M. Bragg* at 269-272; *Separate Views on Remedy of Commissioner Lynn M. Bragg* at 517-526.

<sup>106</sup> 19 U.S.C. § 2251.

<sup>107</sup> See *Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China*, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 at 33-36 (June 1996).

<sup>108</sup> CR/PR at Tables I-4 & I-5. With regard to Australia, Commerce's final LTFV margins are 24.06 percent for BHP Limited Steel and 24.06 percent for all others. *Id.* at Table I-4.

<sup>109</sup> 19 U.S.C. § 1677(7)(C)(iii) instructs the Commission, in examining the impact of subject imports on the domestic industry, to evaluate factors affecting domestic prices. The imposition of safeguard relief has had an impact on prices for cold-rolled steel in the U.S. market; as noted, however, in my view the relevant inquiry under this provision is the extent to which temporary and declining safeguard relief masks the injurious presence of subject imports in the U.S. market.

## VI. PRESENT MATERIAL INJURY BY REASON OF LTFV IMPORTS

In the final phase of antidumping or countervailing duty investigations, the Commission determines whether an industry in the United States is materially injured or threatened with material injury by reason of the imports under investigation.<sup>110</sup> In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.<sup>111</sup> The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”<sup>112</sup> In assessing whether the domestic industry is materially injured by reason of subject imports, the Commission considers all relevant economic factors that bear on the state of the industry in the United States; no single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>113</sup>

### A. Volume of Cumulated Subject Imports

Section 771(7)(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”<sup>114</sup>

Cumulative subject import volume declined by 33.0 percent between 1999 and 2000 and non-subject import volume increased by 29.0 percent, even as total apparent U.S. consumption declined by 0.6 percent and U.S. open market consumption increased by 1.1 percent; during this period, total production by the domestic industry increased by 0.5 percent while total U.S. shipments increased by 0.9 percent and U.S. open market shipments increased by 5.3 percent.<sup>115</sup> I attribute the diminishing presence of subject imports in the U.S. market over this period to the pendency of the 1999-2000 cold-rolled steel investigations.<sup>116</sup> Specifically, for the 10 countries subject to these investigations that were also subject to the 1999-2000 investigations, the volume of subject imports declined by 57.0 percent between 1999 and 2000 (*i.e.* from \*\*\* short tons to \*\*\* short tons); in contrast, the volume of imports from the other 10 countries subject to these investigations increased by 17.6 percent between 1999 and 2000 (*i.e.* from \*\*\* short tons to \*\*\* short tons).<sup>117</sup> On balance, the \*\*\* short ton decline in import volume from the 10 countries subject to investigation in 1999-2000 more than offset the \*\*\* short ton increase in import volume from the other ten countries.

Between 2000 and 2001, however, cumulative subject import volume increased by 54.5 percent and non-subject import volume declined by 45.3 percent, even as total apparent U.S. consumption declined by 10.0 percent and U.S. open market consumption declined by 13.0 percent; during this period,

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<sup>110</sup> 19 U.S.C. §§ 1671d(b), 1673d(b).

<sup>111</sup> 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each [such] factor . . . [a]nd explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B); *see also* Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

<sup>112</sup> 19 U.S.C. § 1677(7)(A).

<sup>113</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>114</sup> 19 U.S.C. § 1677(7)(C)(i).

<sup>115</sup> CR/PR at Tables C-1 and C-2.

<sup>116</sup> *See* 19 U.S.C. § 1677(7)(I).

<sup>117</sup> *See* CR/PR at Table C-1.

total production by the domestic industry declined by 11.9 percent while total U.S. shipments declined by 11.8 percent and U.S. open market shipments declined by 18.2 percent.<sup>118</sup> As a result of the foregoing, the share of the U.S. open market captured by subject imports increased from 8.8 percent in 2000 to 15.7 percent in 2001, while the share held by the domestic industry declined from 86.5 percent in 2000 to 81.4 percent in 2001.<sup>119</sup> Importantly, data for 2001 are not influenced by the pendency of any investigations, the imposition of any provisional duties, or the existence of any prior orders covering cold-rolled steel imports, and thus they offer the most accurate picture of subject import behavior. I find the 2000-2001 surge in subject import volume, which occurred during a period of declining production and consumption in the U.S. market, to be significant.

Comparing the first quarter of 2001 to the first quarter of 2002, cumulative subject import volume declined by 13.5 percent and non-subject import volume declined by 19.3 percent, even as total apparent U.S. consumption declined by 5.2 percent and U.S. open market consumption declined by 10.0 percent; during this period, total production by the domestic industry declined by 2.5 percent while total U.S. shipments declined by 4.5 percent and U.S. open market shipments declined by 9.1 percent.<sup>120</sup> I attribute the diminishing presence of subject imports in the U.S. market during the first quarter of 2002 to the pendency of the instant investigations.<sup>121</sup>

Comparing the second quarter of 2001 to the second quarter of 2002, cumulative subject import volume declined by 90.4 percent and non-subject import volume increased by 67.7 percent, even as total apparent U.S. consumption increased by 9.5 percent; during this period, total production by the domestic industry increased by 17.5 percent while total U.S. shipments increased by 16.3 percent and U.S. open market shipments increased by 14.4 percent.<sup>122</sup> Importantly, the fact that non-subject import volume increased substantially in the second quarter of 2002 belies respondents' argument that the most recent decline in subject import volume is attributable to the imposition of global safeguard relief in March 2002. I therefore attribute the diminishing presence of subject imports in the U.S. market during the second quarter of 2002 to the pendency of the instant investigations.

In sum, I find the 2000-2001 surge in subject import volume to be significant; moreover, I find the absolute volume of subject imports to be significant in light of the significant negative price effects attributable to subject imports, particularly from January 2000 through the second quarter of 2002.<sup>123</sup> I turn now to my discussion of price effects.

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<sup>118</sup> CR/PR at Tables C-1 and C-2.

<sup>119</sup> CR/PR at Table C-2.

<sup>120</sup> CR/PR at Tables C-1 and C-2.

<sup>121</sup> See 19 U.S.C. § 1677(7)(I). Given the 102-day average lead time associated with imports, it is not surprising to find evidence of a volume effect beginning in the first quarter of 2002 in response to petitions filed at the end of the third quarter of 2001.

<sup>122</sup> CR/PR at Tables J-1 and J-2.

<sup>123</sup> Given the domestic industry's strategic decision to meet price driven competition by subject imports, the absence of a broader volume effect is not unexpected, nor does it indicate the absence of material injury by reason of subject imports. See *supra* n.79.

## **B. Price Effects of Cumulated Subject Imports**

Section 771(7)(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether –

(I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.<sup>124</sup>

The Commission collected quarterly pricing data for two representative cold-rolled steel products covering the period January 1999 through June 2002; \*\*\* U.S. producers and 30 importers provided usable pricing data regarding sales of these products.<sup>125</sup> The data account for about 19.6 percent of U.S. commercial shipments; with regard to subject imports, the data coverages are as follows: Argentina (48.8 percent); Belgium (0.2 percent); Brazil (13.4 percent); China (18.3 percent); France (14.0 percent); Germany (8.7 percent); India (29.0 percent); Japan (9.8 percent); Korea (0.5 percent); the Netherlands (90.7 percent); New Zealand (65.4 percent); Russia (37.9 percent); South Africa (57.4 percent); Sweden (28.0 percent); Taiwan (32.5 percent); Thailand (31.6 percent); Turkey (40.3 percent); and Venezuela (64.3 percent).<sup>126</sup>

Quarterly pricing comparisons indicate underselling in 296 out of 455 instances, for a 65.1 percent incidence of underselling; importantly, 77.6 percent of the volume of subject imports of the two products were sold in quarters evidencing underselling, while only 22.4 percent of the volume was sold in quarters that evidenced overselling.<sup>127</sup> Thus, fully three-quarters of the volume of subject imports represented by these two products undersold the domestic like product over the POI.

An examination of period-by-period changes in the incidence of underselling is also probative of the behavior of subject imports. For 1999, out of 148 total quarterly pricing comparisons there were 130 instances of underselling, for an 87.8 percent incidence of underselling; this declined in 2000, with only 65 out of 131 comparisons (*i.e.* 49.6 percent) evidencing underselling.<sup>128</sup> In 2001, the incidence of underselling increased to 79 out of 137 comparisons (*i.e.* 57.7 percent), and remained roughly the same during the first six months of 2002, for which there were 22 out of 39 instances of underselling (*i.e.* 56.4

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<sup>124</sup> 19 U.S.C. § 1677(7)(C)(ii).

<sup>125</sup> Each of these products can have a range of product characteristics that can influence the price charged. CR at V-4, PR at V-3.

<sup>126</sup> CR at V-4 to V-5, PR at V-3. No comparable pricing data were reported for Australia and Spain; however, I again note that over 40 percent of subject imports from Australia, and over 50 percent of subject imports from Spain, were classified under the two primary HTS statistical reporting numbers that account for roughly 70 percent of cumulative subject imports. CR/PR at Table IV-4. Although the probative value of average unit value (“AUV”) data may be limited due to differences in product mix across sources and changes in product mix over time, I note that here the AUV of subject imports from Australia was \*\*\* that of the domestic industry’s U.S. shipments in both 2000 and 2001; this is true for both the domestic industry’s total U.S. shipments as well as U.S. merchant market shipments. *See* CR/PR at Tables C-1 and C-2. Again I note that virtually all subject imports from Australia were comprised of full-hard steel. *See supra* n.48.

<sup>127</sup> *Id.*

<sup>128</sup> *See* CR/PR at Tables V-3 and V-4.

percent). This latter point is significant in that it belies respondents' argument that the behavior of subject imports has changed dramatically as a result of the imposition of safeguard relief in March 2002; rather, it appears that the preponderance of underselling by subject imports has ebbed and flowed in response to the pendency of unfair trade investigations.

The insufficiency of pricing levels in the U.S. market has been established, with declines in the value of U.S. consumption far outpacing declines in demand;<sup>129</sup> this insufficiency is reflected in the fact that for both total market operations and merchant market operations, at no time during the POI did the domestic industry achieve positive operating income, and in particular the fact that for 2001 and the first half of 2002, the domestic industry's cost of goods sold has exceeded its net sales.<sup>130</sup> It has also been established that contracts do not entirely insulate domestic producers from price declines in the spot market,<sup>131</sup> as purchasers leverage the availability of predominantly lower-priced subject imports on the spot market into price concessions by U.S. producers.<sup>132</sup> This reflects the broad interchangeability of subject imports and the domestic like product, and the price driven focus of competition in the market.<sup>133</sup> As a result, I find that underselling by subject imports is significant, and as outlined below, has led to significant price depression and significant price suppression in the U.S. market over the POI.

In general, U.S. prices for sales to distributors increased modestly from the first quarter of 1999 through the second quarter of 2000, after which the impact of the Commission's negative determinations in March 2000 began to be felt in the U.S. market for cold-rolled steel and U.S. prices plummeted through the first quarter of 2002; although prices increased in the second quarter of 2002 they remain below the levels evidenced at the beginning of the POI.<sup>134</sup> With regard to sales to end users, U.S. prices either declined modestly or remained flat from the first quarter of 1999 through the second quarter of 2000, before plummeting through the first quarter of 2002; although prices increased in the second quarter of 2002 they remain below the levels evidenced at the beginning of the POI.<sup>135</sup>

I also note that the record evidences a progressive deterioration in the profitability of the domestic industry, as marginal increases in the cost of goods sold during certain quarters were coupled with vastly greater declines in net sales values from 1999 through the first quarter of 2002;<sup>136</sup> even in the second quarter of 2002, notwithstanding increased demand and substantially declining subject import

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<sup>129</sup> See *supra* section V.B.

<sup>130</sup> CR/PR at Tables C-1, C-2, J-1, J-2, K-1, K-2, and K-3.

<sup>131</sup> See *supra* section V.B.

<sup>132</sup> This is not a recent phenomena in the U.S. market for cold-rolled steel. See *Dissenting Views of Chairman Lynn M. Bragg*, USITC Pub. 3283 at 35 (noting that because of the broad interchangeability between subject imports and the domestic like product, the availability of low-priced subject imports provided leverage with which contract prices could be renegotiated downward).

<sup>133</sup> See *supra* section V.B.

<sup>134</sup> See CR/PR at Tables H-1 and H-3.

<sup>135</sup> See CR/PR at Tables H-2 and H-4.

<sup>136</sup> For total market operations, the domestic industry's operating margin declined from negative 1.2 percent in 1999 to negative 1.7 percent in 2000, and to negative 18.8 percent in 2001; in the first quarter of 2002 the domestic industry's operating margin was negative 16.7 percent and in the second quarter of 2002 it was negative 6.1 percent. CR/PR at Tables C-1 and K-2. For merchant market operations, the domestic industry's operating margin was 0.1 percent in 1999 and 0.0 percent in 2000, declining to negative 15.0 percent in 2001; in the first quarter of 2002 the domestic industry's operating margin was negative 12.5 percent and in the second quarter of 2002 it was negative 4.2 percent. CR/PR at Tables C-2 and K-1.

volumes, the ratio of COGS/sales remained above 100 percent for both the domestic industry's total market operations and its merchant market operations.<sup>137</sup>

Based upon all the foregoing, I find that subject imports that significantly undersold the domestic like product have caused significant price depression in the U.S. market, particularly from mid-2000 through the first quarter of 2002.<sup>138</sup> I further find that even during the most recent period for which data are collected on the record (*i.e.* the second quarter of 2002), the availability of predominantly lower-priced subject imports continued to exert significant negative price effects in the form of significant price suppression, even as demand rebounded and U.S. shipments by the domestic industry increased sharply.<sup>139</sup> I turn now to a more detailed discussion of the significant adverse impact on the domestic industry caused by subject imports.

### **C. Impact of Cumulated Subject Imports**

In examining the impact of the subject imports on the domestic industry, the Commission considers all relevant economic factors that bear on the state of the industry in the United States.<sup>140</sup> These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."<sup>141 142</sup>

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<sup>137</sup> See CR/PR at Tables K-1 and K-2.

<sup>138</sup> In this regard, I reject the results of the econometric analysis of Dr. Thomas Prusa, which suggest that U.S. prices for cold-rolled steel are not a function of subject import prices, but are instead a function of both hot-rolled steel prices and demand for downstream products such as galvanized steel. First, given the commonality in factors of production, a correlation between hot-rolled and cold-rolled prices is not surprising; however, I believe Dr. Prusa's results confuse correlation with causation. Even if hot-rolled steel is the primary cost component in the production of cold-rolled steel, I believe that the relevant inquiry is movement in the entire cost of goods sold; in this case, notwithstanding declines in the price of hot-rolled steel from early 2000 through the end of 2001 (*see* CR/PR Figure V-1), I note that the domestic industry's unit COGS increased modestly from 1999 through 2001, for both total market operations as well as merchant market operations. *See* CR/PR at Tables C-1 and C-2. Second, with regard to galvanized steel, I have already demonstrated that declines in pricing levels far outpaced declines in the demand for cold-rolled steel over the POI.

<sup>139</sup> *See* CR/PR at Tables J-1 and J-2. Both total U.S. shipments and U.S. open market shipments by the domestic industry increased sharply; although total U.S. consumption also increased sharply, U.S. open market consumption remained essentially flat. *See id.*

<sup>140</sup> 19 U.S.C. § 1677(7)(C)(iii). *See also* SAA at 181 and 215 ("In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." *Id.* at 885.).

<sup>141</sup> 19 U.S.C. § 1677(7)(C)(iii). *See also* SAA at 181 and 215.

<sup>142</sup> The statute instructs the Commission to consider the "magnitude of the dumping margin" in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). Commerce's final LTFV margins are as follows: Australia (24.06 percent); India (153.65 percent); Japan (112.56 percent to 115.22 percent); Sweden (40.54 percent); Thailand (127.44 percent to 142.78 percent). CR/PR at Table I-4. In addition, Commerce's preliminary LTFV margins with respect to the remaining 15 subject countries are as follows: Argentina (43.46 percent); Belgium (11.66 percent); Brazil (43.34 percent); China (129.85 percent); France (5.17 percent); Germany (8.47 percent); Korea (5.25 percent to 19.03 percent); The Netherlands (6.38 percent); New Zealand (7.10  
(continued...)

As noted, the domestic industry experienced declining revenues as a result of significant price depression caused by subject imports, particularly from mid-2000 through the first quarter of 2002, followed by significant price suppression caused by subject imports in the second quarter of 2002; the impact of these significant negative price effects far exceeded the impact of declining demand over the latter portion of the POI, causing a progressive increase in the magnitude of operating losses sustained by the domestic industry over this period. The significant adverse impact of subject imports is reflected in the fact that the number of surviving domestic producers posting operating losses (based on total market operations) increased from 8 out of 20 in 1999 and 2000, to 16 out of 21 in 2001, and to 17 out of 21 in the first quarter of 2002; this figure declined to 11 out of 18 in the second quarter of 2002.<sup>143</sup> With respect to open market operations, the number of domestic producers posting operating losses increased from 9 out of 20 in 1999 and 2000, to 16 out of 21 in 2001, and to 17 out of 21 in the first quarter of 2002; this figure declined to 13 out of 18 in the second quarter of 2002.<sup>144</sup> Since January 1999, two U.S. producers have ceased operations, three firms are operating under Chapter 11 bankruptcy protection, and two firms had their operating assets purchased by new owners; on August 16, 2002, an additional U.S. producer announced its intention to file for Chapter 11 bankruptcy protection and close two plants.<sup>145</sup> All the foregoing are indicative of the domestic industry's negative cash flow in 2001 and 2002,<sup>146</sup> as well as the inability of the domestic industry to raise sufficient capital over the POI.

Other indicia of the significant adverse impact of subject imports on the domestic industry include general declines in capacity utilization, production, U.S. shipments, U.S. market share, and the number of production workers, particularly between 2000 and 2001 and extending into the first quarter of 2002; notwithstanding improvement in certain of the performance indicia during the second quarter of 2002, the domestic industry remains unprofitable due to the continuing availability of predominantly lower-priced subject imports in the U.S. market.<sup>147</sup>

Based upon all the foregoing, I find that subject imports have had a significant adverse impact on the domestic cold-rolled steel industry.

## VII. CRITICAL CIRCUMSTANCES

Commerce has rendered final determinations that critical circumstances exist with respect to subject imports from Australia and India.<sup>148</sup> Because I find that a domestic industry is materially injured by reason of these imports, I must further determine whether these imports "are likely to undermine

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<sup>142</sup> (...continued)

percent); Russia (137.33 percent); South Africa (43.32 percent); Spain (46.20 percent); Taiwan (3.15 percent to 16.80 percent); Turkey (7.70 percent); Venezuela (72.81 percent). CR/PR at Table I-5.

Again I note that I do not ordinarily consider the magnitude of the margin of dumping to be of particular significance in evaluating the effects of subject imports on domestic producers. *See Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China*, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 at 33-36 (June 1996).

<sup>143</sup> CR/PR at Tables VI-5 and K-2.

<sup>144</sup> CR/PR at Tables VI-1 and K-1.

<sup>145</sup> *See supra* section V.B.

<sup>146</sup> CR/PR at Table VI-1.

<sup>147</sup> *See* CR/PR at Tables C-1, C-2, J-1, J-2, K-1, K-2; *see also supra* section V-B.

<sup>148</sup> 67 Fed. Reg. 47,509 (July 19, 2002) (Australia); 67 Fed. Reg. 47,518 (July 19, 2002) (India).

seriously the remedial effect” of antidumping duty orders covering such imports.<sup>149</sup> Upon review, I render negative critical circumstances determinations with respect to both Australia and India.

In the case of Australia, although a comparison of the two months preceding the filing of the petition (*i.e.* August and September 2001) versus the following two month period (*i.e.* October and November 2001) indicates a 50 percent increase in subject import volume from Australia, a three month comparison indicates no change in import volume and both five and six month comparisons indicate a 12 percent decline in import volume.<sup>150</sup> Moreover, the absolute volume of imports from Australia that entered after the filing of the petition accounted for less than one half of one percent of both apparent U.S. consumption and U.S. production, as well as only about 2 percent of cumulative subject imports during this period.<sup>151</sup> Finally, the record indicates no U.S. inventories of the Australian product over the POI.<sup>152</sup> Based upon all the foregoing, I find that imports from Australia that are subject to a critical circumstances determination are not likely to undermine seriously the remedial effect of an antidumping duty order.

In the case of India, a comparison of the two months preceding the filing of the petition versus the following two month period indicates a 91 percent decline in subject import volume from India, while a three month comparison indicates a 96 percent decline; however, a five month comparison indicates a 45 percent increase and a six month comparison indicates a 32 percent increase in import volume.<sup>153</sup> Nonetheless, the absolute volume of subject imports from India that entered after the filing of the petition were minuscule, accounting for substantially less than one half of one percent of both apparent U.S. consumption and U.S. production, and only about 0.2 percent of cumulative subject imports during this period.<sup>154</sup> Finally, the record indicates only minimal U.S. inventories of the Indian product over the POI.<sup>155</sup> Based upon all the foregoing, I find that imports from India that are subject to a critical circumstances determination are not likely to undermine seriously the remedial effect of an antidumping duty order.

## VIII. CONCLUSION

Based upon all the foregoing, I find that the record in these investigations contains compelling evidence of price-driven material injury to the domestic industry by reason of cumulated subject imports. I therefore dissent from the negative determinations rendered by the Commission majority, and I find that the domestic industry producing certain cold-rolled steel products is materially injured by reason of LTFV imports from Australia, India, Japan, Sweden, and Thailand.

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<sup>149</sup> 19 U.S.C. § 1673d(b)(4)(A)(i). The statute further provides that in making this determination, the Commission shall consider, among other factors it considers relevant: (I) the timing and volume of the imports; (II) a rapid increase in inventories of the imports; and (III) any other circumstances indicating that the remedial effect of the antidumping duty order will be seriously undermined. 19 U.S.C. § 1673d(b)(4)(A)(ii).

<sup>150</sup> See CR/PR at Table I-9.

<sup>151</sup> See CR/PR at Tables I-9, C-1, and J-1.

<sup>152</sup> CR/PR at Table VII-24.

<sup>153</sup> See CR/PR at Table I-9.

<sup>154</sup> See CR/PR at Tables I-9, C-1, and J-1.

<sup>155</sup> CR/PR at Table VII-24.